

IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:	
In re	:	Chapter 11
	:	
DELPHI CORPORATION, <u>et al.</u> ,	:	Case No. 05-44481 (RDD)
	:	
Debtors.	:	(Jointly Administered)
	:	
-----	x	

AFFIDAVIT OF SERVICE

I, Evan Gershbein, being duly sworn according to law, depose and say that I am employed by Kurtzman Carson Consultants, LLC, the Court appointed claims and noticing agent for the Debtors in the above-captioned cases.

On February 2, 2006, I caused to be served the documents listed below (i) upon the parties listed on Exhibit A hereto via overnight delivery, (ii) upon the parties listed on Exhibit B hereto via electronic notification, and (iii) upon the parties listed on Exhibit C hereto via postage pre-paid U.S. mail:

- 1) Notice of Presentment of Stipulation and Order Resolving Motion by Pepco Energy Services, Inc. for Order of Relief from Automatic Stay, or in the Alternative, for Order Compelling Debtors to Assume or Reject Sales Agreement (Docket No. 2031) [a copy of which is attached hereto as Exhibit D]
- 2) Debtors' Objection to Motion by Furukawa Electric North America APD for Relief from Automatic Stay to Permit Setoff of Claims (Docket No. 2034) [a copy of which is attached hereto as Exhibit E]
- 3) Debtors' Objection to Motion for Order Under 11 U.S.C. Section 365(d)(2) Directing Debtor Delphi Automotive Systems, LLC to Determine within 150 Days Whether to Assume or Reject its Nonresidential Real Property Lease with Cherokee North Kansas City, LLC (Docket No. 2035) [a copy of which is attached hereto as Exhibit F]

On February 2, 2006, I caused to be served the document listed below (i) upon the parties listed on Exhibit G hereto via overnight delivery:

- 4) Notice of Presentment of Stipulation and Order Resolving Motion by Pepco Energy Services, Inc. for Order of Relief from Automatic Stay, or in the Alternative, for Order Compelling Debtors to Assume or Reject Sales Agreement (Docket No. 2031) [a copy of which is attached hereto as Exhibit D]

On February 2, 2006, I caused to be served the documents listed below (i) upon the parties listed on Exhibit H hereto via overnight delivery:

- 5) Debtors' Objection to Motion by Furukawa Electric North America APD for Relief from Automatic Stay to Permit Setoff of Claims (Docket No. 2034) [a copy of which is attached hereto as Exhibit E]

On February 2, 2006, I caused to be served the documents listed below (i) upon the parties listed on Exhibit I hereto via overnight delivery:

- 6) Debtors' Objection to Motion for Order Under 11 U.S.C. Section 365(d)(2) Directing Debtor Delphi Automotive Systems, LLC to Determine within 150 Days Whether to Assume or Reject its Nonresidential Real Property Lease with Cherokee North Kansas City, LLC (Docket No. 2035) [a copy of which is attached hereto as Exhibit F]

Dated: February 6, 2006

/s/ Evan Gershbein  
Evan Gershbein

Subscribed and sworn to (or affirmed) before me on this 6th day of February, 2006, by Evan Gershbein, personally known to me or proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Signature : Sarah Elizabeth Frankel

Commission Expires: 12/23/08

# **EXHIBIT A**

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## **EXHIBIT B**

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COMPANY	CONTACT	ADDRESS1	ADDRESS2	CITY	STATE	ZIP	PHONE	FAX	EMAIL	PARTY / FUNCTION
Office of the Chapter 13 Trustee Peggy Housner	Camille Hope	P.O. Box 954 Cadillac Place	3030 W. Grand Blvd., Suite 10-200	Macon Detroit	GA MI	31202 48202	478-742-8706 313-456-0140	478-746-4488	<a href="mailto:cahope@chapter12macon.com">cahope@chapter12macon.com</a> <a href="mailto:hausnerp@michigan.gov">hausnerp@michigan.gov</a>	Office of the Chapter 13 Trustee Assistant Attorney General for State of Michigan, Department of Treasury
Pierce Atwood LLP	Keith J. Cunningham	One Monument Square		Portland	ME	04101	207-791-1100	207-791-1350	<a href="mailto:kcunningham@piercewood.com">kcunningham@piercewood.com</a>	Counsel for FCI Canada, Inc.; FCI Electronics Mexido, S. de R.L. de C.V.; FCI USA, Inc.; FCI Brasil, Ltda; FCI Automotive Deutschland GmbH; FCI Italia S. p.A.
Professional Technologies Services	John V. Gorman	P.O. Box #304		Frankenmuth	MI	48734	989-385-3230	989-754-7690		Corporate Secretary for Professional Technologies Services
Ropes & Gray LLP	Marc E. Hirschfield	45 Rockefeller Plaza		New York	NY	10111-0087	212-841-5700	212-841-5725		Attorneys for D-J, Inc.
Rosen Slome Marder LLP	Thomas R. Slome	333 Earle Ovington Boulevard	Suite 901	Uniondale	NY	11533	516-227-1600			Counsel for JAE Electronics, Inc.
Schafer and Weiner PLLC	Daniel Weiner	40950 Woodward Ave.	Suite 100	Bloomfield Hills	MI	48304	248-540-3340		<a href="mailto:dweiner@schaferweiner.com">dweiner@schaferweiner.com</a>	Counsel for Dott Industries, Inc.
Schafer and Weiner PLLC	Howard Borin	40950 Woodward Ave.	Suite 100	Bloomfield Hills	MI	48304	248-540-3340		<a href="mailto:hborin@schaferweiner.com">hborin@schaferweiner.com</a>	Counsel for Dott Industries, Inc.
Schafer and Weiner PLLC	Max Newman	40950 Woodward Ave.	Suite 100	Bloomfield Hills	MI	48304	248-540-3340		<a href="mailto:mnewman@schaferweiner.com">mnewman@schaferweiner.com</a>	Counsel for Dott Industries, Inc.
Schafer and Weiner PLLC	Ryan Heilman	40950 Woodward Ave.	Suite 100	Bloomfield Hills	MI	48304	248-540-3340		<a href="mailto:rheilman@schaferweiner.com">rheilman@schaferweiner.com</a>	Counsel for Dott Industries, Inc.
The Timpken Corporation BIC - 08	Robert Morris	1835 Dueber Ave. SW	PO Box 6927	Canton	OH	44706				Representative for Timpken Corporation

## **EXHIBIT D**

**PRESENTMENT DATE: 2/15/06  
AT: 12:00 NOON**

**OBJECTIONS DUE: 2/15/06  
AT: 11:00 A.M.**

TOGUT, SEGAL & SEGAL LLP  
Bankruptcy Co-Counsel for Delphi Corporation, *et al.*,  
Debtors and Debtors in Possession  
One Penn Plaza, Suite 3335  
New York, New York 10119  
Telephone: (212) 594-5000  
Facsimile: (212) 967-4258  
Albert Togut (AT-9759)  
Neil Berger (NB-3599)

Delphi Legal Information Hotline:  
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International: (248) 813-2689

Delphi Legal Information Website:  
<http://www.delphidocket.com>

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re: :  
: Chapter 11  
DELPHI CORPORATION *et al.*, : Case No. 05-44481 (RDD)  
: (Jointly Administered)  
: Debtors. :  
-----X

**NOTICE OF PRESENTMENT OF  
STIPULATION AND ORDER RESOLVING MOTION BY  
PEPCO ENERGY SERVICES, INC. FOR ORDER OF RELIEF FROM  
AUTOMATIC STAY, OR IN THE ALTERNATIVE, FOR ORDER  
COMPELLING DEBTORS TO ASSUME OR REJECT SALES AGREEMENT**

**PLEASE TAKE NOTICE** that Delphi Corporation ("Delphi") and certain of its subsidiaries and affiliates, Debtors and Debtors in Possession in the above-captioned cases, by their Bankruptcy co-counsel, Togut, Segal & Segal LLP, will present a proposed Stipulation and Order resolving the Motion by Pepco Energy Services, Inc. for Order of relief from automatic stay, or in the alternative, for Order compelling debtors to assume or reject sales agreement, a true and complete copy of which is annexed

hereto, to the Honorable Robert D. Drain, United States Bankruptcy Judge, in his Chambers, Room 632 of the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004, on February 15, 2006 at 12:00 noon.

**PLEASE TAKE FURTHER NOTICE** that objections, if any, to approval of the Stipulation and Order (a) must be in writing, (b) must conform to the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York, and the Order under 11 U.S.C. §§ 102 (1) and 105 and Fed. R. Bankr. P. 2002(m), 9006, 9007, and 9014 Establishing (i) Omnibus Hearing Dates, (ii) Certain Notice, Case Management, and Administrative Procedures, and (iii) Scheduling an Initial Case Conference in Accordance with Local Bankr. R. 1007-2(e) (the "Case Management Order") (Docket No. 245), (c) must be filed with the Bankruptcy Court in accordance with General Order M-242 (as amended) - registered users of the Bankruptcy Court's case filing system must file electronically, and all other parties-in-interest must file on a 3.5 inch disk (preferably in Portable Document Format (PDF), WordPerfect, or any other Windows-based word processing format), (d) must be submitted in hard-copy form directly to the chambers of the Honorable Robert D. Drain, United States Bankruptcy Judge, and (e) and must be served upon: (i) Delphi Corporation, 5725 Delphi Drive, Troy, Michigan 48098 (Attn: General Counsel); (ii) co-counsel for the Debtors, Togut, Segal & Segal LLP, One Penn Plaza, New York, New York 10119 (Attn: Neil Berger, Esq.); (iii) counsel for the agent under the Debtors' prepetition credit facility, Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, New York 10017 (Attn: Kenneth S. Ziman); (iv) counsel for the agent under the postpetition credit facility, Davis Polk & Wardwell, 450 Lexington Avenue, New York, New York 10017 (Attn: Marlane Melican); (v) commercial and litigation counsel to the Debtors, Butzel & Long,

P.C., 100 Bloomfield Hills Parkway, Suite 200, Bloomfield Hills, MI 48304 (Attn: James Darien); (vi) counsel for Pepco Energy Services, Inc., Whiteford, Taylor & Preston L.L.P., 7 Saint Paul Street, Baltimore, Maryland 21202 (Attn: Brent C. Strickland, Esq.); (vii) co-counsel for the Official Committee of Unsecured Creditors, WarnerStevens LLP, 301 Commerce Street, Suite 1700, Fort Worth, Texas 76102 (Attn: Jeffrey A. Resler, Esq.); and (viii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, Suite 2100, New York, New York 10004 (Attn: Alicia M. Leonhard), in each case so as to be **received** no later than **11:00 a.m. (Prevailing Eastern Time) on February 15, 2006** (the "Objection Deadline").

PLEASE TAKE FURTHER NOTICE that only those timely-written objections made in accordance herewith, and timely filed and received by the Objection Deadline will be considered by the Bankruptcy Court, and that if no objections to the Stipulation and Order are timely filed and served the Bankruptcy Court may enter the proposed Stipulation and Order.

Dated: New York, New York  
February 2, 2006

TOGUT, SEGAL & SEGAL LLP  
Bankruptcy Co-Counsel for  
Delphi Corporation, *et al.*,  
Debtors and Debtors-in-Possession  
By:

/s/Neil Berger  
NEIL BERGER (NB-3599)  
A Member of the Firm  
One Penn Plaza, Suite 3335  
New York, New York 10119  
Telephone: (212) 594-5000  
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TOGUT, SEGAL & SEGAL LLP  
Co-Counsel for Delphi Corporation, *et al.*,  
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Neil Berger (NB-3599)

Delphi Legal Information Hotline:  
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International: (248) 813-2698

Delphi Legal Information Website:  
<http://www.delphidocket.com>

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
In re:	:	
	:	Chapter 11
DELPHI CORPORATION, <i>et al.</i> ,	:	Case No. 05-44481 [RDD]
	:	
Debtors.	:	Jointly Administered
	:	
-----X		

**STIPULATION AND ORDER CONCERNING MOTION BY  
PEPCO ENERGY SERVICES, INC. FOR ORDER OF RELIEF FROM  
AUTOMATIC STAY, OR IN THE ALTERNATIVE, FOR ORDER  
COMPELLING DEBTORS TO ASSUME OR REJECT SALES AGREEMENT**

**Recitals**

**WHEREAS**, On October 8, 2005 (the "Filing Date"), Delphi and certain of its affiliates each filed voluntary petitions in this Court for reorganization relief under Chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the "Bankruptcy Code"); and

**WHEREAS**, the Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code; and



**WHEREAS**, this Court entered Orders directing the joint administration of the Debtors' chapter 11 cases (Docket Nos. 28 and 404); and

**WHEREAS**, on October 17, 2005, the United States Trustee for the Southern District of New York appointed an Official Committee of Unsecured Creditors (the "Committee") in these cases, which is represented by Latham & Watkins; and

**WHEREAS**, no trustee or examiner has been appointed in the Debtors' cases; and

**WHEREAS**, prior to the Filing Date, movant Pepco Energy Services, Inc. ("Pepco") and the Debtors entered into a Master Electric Sales Agreement, dated July 8, 2003 (including all amendments, the "Sales Agreement"), the terms of which are strictly confidential; and

**WHEREAS**, pursuant to the Sales Agreement, Pepco is the supplier of electricity to the Debtors' New Brunswick, New Jersey facility; and

**WHEREAS**, on November 21, 2006, Pepco filed its motion for an Order for relief from the automatic stay to provide notice of default and terminate the Sales Agreement, or in the alternative, to compel the Debtors' assumption or rejection of the Sales Agreement (the "Motion"); and

**WHEREAS**, in the Motion, Pepco requested that: (a) the automatic stay be modified so that Pepco could provide notice to terminate the Sales Agreement based upon an asserted untimely post-petition payment by the Debtors that was outstanding as of the filing of the Motion (and that payment was made the day after the Motion was filed); (b) in the event that the Debtors pay the sums owed to Pepco for the post-petition period later than the exact date such payments are due, the automatic stay be modified without further Order of this Court to permit the termination of the Sales

Agreement; and (c) that the Debtors be compelled to assume or reject the Sales Agreement; and

**WHEREAS**, on December 29, 2005, the Debtors filed an Objection to the Motion; and

**WHEREAS**, the Debtors and Pepco have conferred concerning consensual resolution of the Motion.

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED** by and among the Debtors and Pepco, through their respective attorneys, as follows:

1. Except as otherwise provided herein, all terms of the Sales Agreement shall remain in full force and effect.
2. Pepco will transmit its monthly prepay invoices to the Debtors no later than the 5th day of the month in which payment of the invoice is due, by e-mailing it to [bills@entech.us](mailto:bills@entech.us).
3. The Debtors will have until 10 days after receipt of each monthly prepay invoice at [bills@entech.us](mailto:bills@entech.us) to pay each invoice.
4. In the event that the Debtors default in the timely payment of any post-petition prepay invoice owing under the Sales Agreement, the Debtors shall have a cure period of two business days following notification of payment default by Pepco to the Debtors at: (a) (937) 455-9636, Attn: Don Poole, and (b) [bills@entech.us](mailto:bills@entech.us) (the "Cure Period") to cure such default.
5. In the event that the Debtors fail to cure any payment default regarding a post-petition prepay invoice within the Cure Period, Pepco may file with the Clerk of the Court and serve, upon three business days' notice, a notice of presentment of proposed order modifying the automatic stay to allow Pepco to serve upon the Debtors a Notice of Nonpayment and Termination in accordance with the

Sales Agreement (the "Notice of Presentment").

6. Pepco shall transmit the Notice of Presentment by faxing it to the parties designated in paragraph 21 of the Court's October 14, 2005 Case Management Order in the Debtors' case, including: (a) the Debtors, (937) 455-7686, Attn: Don Poole; (b) Togut, Segal & Segal LLP, co-counsel for the Debtors, (212) 967-4258, Attn: Neil Berger, Esq.; and (c) Latham & Watkins, counsel for the Committee, (212) 751-4867, Attn: Robert J. Rosenberg, Esq.

7. The Motion is hereby resolved and withdrawn without prejudice.

8. This Court shall retain original and exclusive jurisdiction to interpret and enforce the terms of this Stipulation including, without limitation, any issues concerning any Notice of Presentment filed and served pursuant hereto.

DATED: New York, New York  
February 2, 2006

TOGUT, SEGAL & SEGAL LLP

By: /s/Neil Berger  
ALBERT TOGUT (AT-9759)  
NEIL BERGER (NB-3599)  
Members of the Firm  
One Penn Plaza, Suite 3335  
New York, New York 10119  
Telephone: (212) 594-5000  
Co-Counsel for Delphi Corporation,  
*et al.*, Debtors and Debtors in Possession

DATED: Baltimore, Maryland  
January 30, 2006

WHITEFORD, TAYLOR & PRESTON L.L.P.

By: /s/Brent C. Strickland  
BRENT C. STRICKLAND (BS-7811)  
Seven Saint Paul Street  
Baltimore, Maryland 21202  
Telephone: (410) 347-8700  
Counsel for Pepco Energy Services, Inc.

**SO ORDERED** this \_\_\_\_\_ day of February, 2006  
In New York, New York

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HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE

# **EXHIBIT E**

TOGUT, SEGAL & SEGAL LLP  
Bankruptcy Conflicts/Co-Counsel for Delphi Corporation, et al.,  
Debtors and Debtors in Possession  
One Penn Plaza, Suite 3335  
New York, New York 10119  
(212) 594-5000  
Albert Togut (AT-9759)  
Neil Berger (NB-3599)

Delphi Legal Information Hotline:  
Toll Free: (800) 718-5305  
International: (248) 813-2698

Delphi Legal Information Website:  
<http://www.delphidocket.com>

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

HEARING DATE: 2/9/06  
AT: 10:00 a.m.

-----X	:	
In re:	:	
	:	Chapter 11
DELPHI CORPORATION, <i>et al.</i> ,	:	Case No. 05-44481 [RDD]
	:	
Debtors.	:	Jointly Administered
	:	
-----X	:	

**DEBTORS' OBJECTION TO MOTION  
BY FURUKAWA ELECTRIC NORTH AMERICA APD FOR  
RELIEF FROM AUTOMATIC STAY TO PERMIT SETOFF OF CLAIMS**

**TO THE HONORABLE ROBERT D. DRAIN,  
UNITED STATES BANKRUPTCY JUDGE:**

Delphi Corporation ("Delphi") and certain of its subsidiaries and affiliates, debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"), by their undersigned counsel, as and for their objection to the motion dated December 15, 2005 (the "Motion") of Furukawa Electric North America APD ("Furukawa") for an Order for relief from the automatic stay to permit a setoff of claims, respectfully state:

**PRELIMINARY STATEMENT**

1. On October 4, 2005, just four days prior to the Initial Filing Date (defined below), the Debtors mistakenly made a payment to Furukawa in the amount of \$2,826,506.66 (the “Double Payment”) on account of invoices (the “Invoices”) that the Debtors had already satisfied on September 14, 2005.

2. Furukawa readily admits that the Double Payment was erroneous, and that it was mistakenly made on account of the Invoices.

3. Rather than return the Double Payment, Furukawa placed the funds in a “suspension account”, and Furukawa now seeks relief from the automatic stay to setoff and satisfy pre-petition general unsecured claims that pre-date the Double Payment and which are completely unrelated to the Double Payment.

4. The Double Payment was not made on account of an antecedent debt, and the Debtors did not receive any adequate consideration in exchange for that transfer. Consequently, the Double Payment is avoidable and recoverable by the Debtors as a constructive fraudulent conveyance pursuant to Title 11, U.S.C. (the “Bankruptcy Code”), section 548(a)(1)(B).

5. “It is well established that a party will be unable to assert a setoff while that party is being sued for fraudulent transfers . . . [t]his is because . . . there is no mutuality of obligations, which is required under Code Section 553(a).” *In re O.P.M. Leasing Services, Inc.*, 35 B.R. 854, 868 (Bankr. S.D.N.Y. 1983).

6. Furukawa is an entity from which property is recoverable and a transferee of a transfer that is avoidable under Chapter 5 of the Bankruptcy Code. Pursuant to Bankruptcy Code section 502(d), Furukawa’s pre-petition claims against the Debtors “shall” be disallowed unless and until it returns the Double Payment to the Debtors. *See* 11 U.S.C. § 502(d). Consequently, Furukawa does not have allowable

claims with which to exercise a setoff. Mutuality does not exist. Moreover, Furukawa does not have a claim or right which is entitled to adequate protection or an account of which relief from the automatic stay may be granted.

7. Allowing the relief sought by Furukawa will serve only to perpetuate an improper depletion of the Debtors' estate. That result is contrary to the policies of Bankruptcy Code sections 502(d), 548, and 553.

8. Based upon the foregoing, and the authorities set forth below, Furukawa's Motion should be denied.

### **STATEMENT OF FACTS**

#### **The Chapter 11 Cases**

9. On October 8, 2005 (the "Initial Filing Date"), Delphi and certain of its subsidiaries (the "Initial Filers") each filed voluntary petitions in this Court for reorganization relief under Chapter 11 of the Bankruptcy Code. On October 14, 2005, three additional U.S. subsidiaries of Delphi (together with the Initial Filers, collectively, the "Debtors") filed voluntary petitions in this Court for reorganization relief under Chapter 11 of the Bankruptcy Code.

10. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. This Court entered Orders directing the joint administration of the Debtors' chapter 11 cases (Docket Nos. 28 and 404).

11. On October 17, 2005, the United States Trustee for the Southern District of New York appointed an official committee of unsecured creditors in these



cases, which is represented by Latham & Watkins. No trustee or examiner has been appointed.

**The Debtors' Pre-Petition Transactions with Furukawa**

12. Furukawa supplies the Debtors with SIR coils and connection systems pursuant to various purchase orders and supply contracts. *See* Affirmation of Dana F. Fidler, dated February 1, 2006, annexed hereto as Exhibit A ("Fidler Affirmation") ¶ 5.

13. In response to demands by Furukawa, on or about September 14, 2005, the Debtors made a wire payment of \$2,832,045.42 to Furukawa, noting in the Wire Request Form: "Vendor refusing to ship due to press release" (the "September 14 Payment"). *See* Fidler Affirmation ¶ 6 and Exhibit 1.

14. The September 14 Payment represented a gross payment of \$2,860,651.94, less a 1% early payment discount, and it satisfied payment for the Invoices for goods that were just previously shipped to the Debtors. *See* Fidler Affirmation ¶ 7.

15. As a result of an oversight, on or about October 4, 2005, the Debtors made an electronic funds transfer payment to Furukawa in the amount of \$2,826,506.66, *i.e.* the Double Payment. *See* Fidler Affirmation ¶ 8.

16. The Double Payment was remitted by the Debtors against the same Invoices that had already been satisfied by the September 14 Payment. *See* Fidler Affirmation ¶ 9.

17. The September 14 Payment and the Double Payment were in slightly different amounts only because one invoice for approximately \$34,000 was not included in the Double Payment, and the Double Payment did not take credit for a prompt-payment discount. *See* Motion, at 2-3; *see also* Fidler Affirmation ¶ 10.

18. Furukawa placed the Double Payment into a “suspension account”.

*See Motion*, at 3.

19. Four days later, on October 8, the Debtors filed their petitions in this Court. The Debtors never provided any instructions to Furukawa regarding application of the Double Payment. *See Fidler Affirmation* ¶ 11.

20. Furukawa does not dispute any of these facts.

### **Relief Sought By Furukawa**

21. Furukawa requests an Order pursuant to Bankruptcy Code section 362(d) modifying the automatic stay so that it can apply the Double Payment to an equivalent amount of pre-petition invoices that are completely unrelated to the Double Payment.

22. However, Furukawa cannot assert or provide any basis to conclude that cause exists for modification of the automatic stay because the Double Payment constitutes an avoidable constructive fraudulent transfer under Bankruptcy Code section 548(a)(1)(B)<sup>1</sup>, and Furukawa’s demand lacks the mutuality that is required by Bankruptcy Code section 553(a).

23. Furukawa is an entity from which property of the Debtors’ estate is recoverable and a transferee of a transfer avoidable under Chapter 5 of the Bankruptcy Code. Consequently, its pre-petition claims must be disallowed unless and until it returns the Double Payment to the Debtors. By operation of Bankruptcy Code section

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<sup>1</sup> Alternatively, the Double Payment could be argued to be avoidable as a preferential transfer made while the Debtors were presumed insolvent. *See In re Computrex International, Inc.*, 334 B.R. 229, 232 (Bankr. W.D. Ky. 2005) (“in a § 547 preference action, [o]verpayments . . . are subject to recovery by the trustee”) (emphasis in original). The Debtors may also conclude that the September 14 Payment was preferential.

502(d), Furukawa does not have an allowable claim with which to exercise a setoff, and it has no right or claim that is entitled to adequate protection.

### **ARGUMENT**

#### **A. Furukawa Has Failed to Show Cause to Modify the Automatic Stay Pursuant to Section 362(d)(1)**

24. The Second Circuit has described the automatic stay as a “crucial provision of bankruptcy law” intended to “prevent disparate actions against debtors . . . [and] ensur[e] that no creditor receives more than an equitable share of the bankrupt’s estate.” *Lincoln Savings Bank, FSB v. Suffolk County Treasurer (In re Parr Meadows Racing Assoc., Inc.)*, 880 F.2d 1540, 1545 (2d Cir. 1989) (internal citations omitted).

25. Pursuant to Bankruptcy Code section 362(d)(1), the Court may grant relief from the automatic stay “for cause.” The Bankruptcy Code does not define the term “cause” and the determination of whether sufficient cause exists to modify the stay is determined on a case by case analysis. *See In re Balco Equities Ltd., Inc.*, 312 B.R. 734, 748-49 (Bankr. S.D.N.Y. 2004).

26. Furukawa erroneously argues that it has established a right to setoff and a *prima facie* showing of “cause” for relief from the automatic stay. *See* Motion, at 5-6. However, as demonstrated below, Furukawa has neither an allowable claim with which to execute a setoff nor a claim or right which is entitled to adequate protection. Therefore, Furukawa’s request for relief from the automatic stay fails as a matter of law.

**The Double Payment is a Not Subject to Setoff Because it is a Constructive Fraudulent Transfer**

27. The Double Payment constitutes a constructive fraudulent conveyance. See *In re Rand Energy Co.*, 256 B.R. 712 (Bankr. N.D. Tex. 2000). This Court has held that it is “well established” that fraudulent conveyance claims may not be defeated or diminished by a setoff. *O.P.M.*, 35 B.R. at 868.

28. In *Rand*, the reorganized debtor mistakenly overpaid a creditor pre-petition for drilling services provided by the creditor. The overpayments were made on account of invoices that the debtor had previously paid. The creditor did not return the overpayments to the debtor and instead applied the overpayments to pay three invoices covering unrelated pre-petition services that it provided, and three invoices covering post-petition services by the creditor. In response to the reorganized debtor’s action to obtain turnover of the overpayments, the creditor sought retroactive relief from the automatic stay to permit a setoff of the pre-petition and post-petition invoices against the overpayments. The *Rand* Court held that the debtor did not receive reasonably equivalent value in exchange for its overpayments to the creditor, reasoning that “Rand made the transfer to pay for services that had already been paid . . . not . . . as a deposit for drilling services to be provided to [another oil well]”, and it concluded that the overpayment constituted a fraudulent conveyance. *Id.* at 716. The Court also rejected the creditor’s request for retroactive approval of a setoff, holding that the creditor “may not, however, invoke the setoff doctrine to a fraudulent transfer.” *Id.* at 716-17 (citing *Mack v. Newton*, 737 F.2d 1343, 1366 (5th Cir. 1984) & *In re J.R. McConnell, Jr.*, 934 F.2d 662, 667 (5th Cir. 1991)).

29. The holding in *Rand* is applicable to Furukawa’s demand, and it is consistent with the plain language of the constructive fraudulent transfer provisions of

Bankruptcy Code section 548, which enable a debtor in possession to “avoid any transfer of an interest of the debtor in property . . . that was made . . . on or within one year before the date of the filing of the petition, if the debtor voluntarily or involuntarily . . . received less than a reasonably equivalent value **in exchange for** such transfer. . . .”

11 U.S.C. § 548(a)(1)(B)(i) (emphasis added). As *Collier on Bankruptcy* explains:

The statute has two components to the reasonably equivalent value analysis. The first is whether sufficient value was received. The second is whether the value was received “in exchange for” the transfer that was made or obligation that was incurred.

5 *Collier on Bankruptcy* ¶ 548.05[1][b] (15th ed. rev. 2005).

30. The Double Payment to Furukawa satisfies neither of the criteria: (a) the Debtors did not receive any adequate value in exchange for the Double Payment; and (b) no value was received by the Debtors *in exchange for* the Double Payment because the Double Payment was made on account of Invoices which had previously been satisfied by the September 14 Payment.

31. The Debtors surrendered and transferred approximately \$2.8 million to Furukawa, depleted their estate, and received nothing in exchange. Bankruptcy Code section 548 was enacted to address this occurrence and to preserve the assets of the estate. *See In re Butcher*, 58 B.R. 128, 130 (Bankr. E.D. Tenn. 1986).

32. Furukawa disregards the requirement that a debtor must receive value *in exchange for* its transfer, and mistakenly argues that Michigan law governs the underlying agreements and provides that “a creditor has the absolute right ‘to apply the unappropriated monies of his debtor, in his hands, in extinguishment of the debts due to him.’” Motion, at 4 (citing *Whispering Pines AFC Homes, Inc. v. Department of Treasury*, 212 Mich. App. 545; 538 N.W.2d 452 (Mich. App. 1995) (citing *United States v. Munsey Trust Co.*, 332 U.S. 234, 239 (1947) and *Brown v. Lobdell*, 36 Or. App. 397; 585 P.2d 4, 7

(1978)). Furukawa's argument misses the mark and the cases that it cites in support, principally *Whispering Pines*, are inapposite.

33. The *Whispering Pines* state court was not asked to address a request to setoff pre-bankruptcy claims against an overpayment or a fraudulent conveyance that was subject to avoidance. The *Whispering Pines* court denied an adult foster care home operator's request for a restraining order to prevent the Department of the Treasury from continuing to withhold government benefits. In reaching its conclusion, the court recognized the "common law right" of the Department of the Treasury to withhold sums otherwise payable to the foster care home to recover an overpayment by applying "the unappropriated monies of [its] Debtor, in [its] hands, in extinguishment of the debts due to [it]." *Id.* at 456.<sup>2</sup>

34. The *Whispering Pines* Court defined parties' rights under state law principles, and it was not asked to address a proposed set-off of pre-bankruptcy claims against a fraudulent conveyance to a creditor or any other bankruptcy principles. While Furukawa may have had setoff rights under Michigan state law, those state law rights fail to satisfy the "mutuality" requirement found in Bankruptcy Code section 553. *See O.P.M.*, 35 B.R. at 868.

35. The inability of parties to use pre-petition claims and state law setoff rights to defeat or diminish chapter 5 avoidance causes of action against them is a fundamental and widely recognized principle:

The general rule is that, in an action by a trustee to recover money paid or property transferred to a creditor under the preference provisions of the Code, the creditor cannot offset

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<sup>2</sup> *Knisley v. Bowman*, 656 F. Supp. 1540 (W.D. Mich. 1987), on which the *Whispering Pines* Court relied, also involved the power of the Michigan Department of Treasury to set off funds owed to taxpayers against debts owed by the taxpayers to other state agencies.

its liability against either a separate debt owed to it by the debtor or the original liability on account of which the preferential transfer was made. The reasoning for this rule is that allowing the creditor to offset the amount of the transfer would merely continue the preference, thereby rendering the preference statute useless because the preference would not become available for *pro rata* distribution to all creditors. *Applying similar logic, a liability owed to the debtor by reason of a fraudulent conveyance cannot be offset against a creditor's claim against the debtor.*

5 Collier on Bankruptcy ¶ 553.03[3][e][v] (emphasis added).

**The Double Payment is a Not Subject to Setoff Because The Obligations Sought to be Setoff are Not Mutual**

36. Furukawa may not use pre-petition claims against the Debtors to defeat the Debtors' right to seek a recovery of the Double Payment because there is no mutuality of obligations, which is a fundamental predicate to the allowance of a setoff pursuant to Bankruptcy Code section 553(a).

37. A pre-petition debtor and a debtor in possession are separate and distinct entities, which act in different capacities before and after a bankruptcy filing. *See, e.g., In re Genuity, Inc.*, 323 B.R. 79, 82 (Bankr. S.D.N.Y. 2005) (citing *Shopmen's Local 455 v. Kevin Steel Products, Inc.*, 519 F.2d 698, 704 (2d Cir. 1975)). As the Court explained in *Matter of Johnson*, 552 F.2d 1072, 1078 (4th Cir. 1977), "set-off is not allowed where the trustee's claim is founded on his extraordinary power to avoid transactions otherwise binding on the bankrupt himself, *e.g.* where the creditor seeking set-off was the recipient of a preferential or fraudulent transfer from the bankrupt." Put a different way, there can be no mutuality of obligations between a debtor in possession and transferee of fraudulent transfers because the liability of such transferee to the estate is not a "debt." *O.P.M.*, 35 B.R. at 868.

38. “Creditors who have received voidable transfers to the detriment of the pool should not be entitled to make additional demands on the assets of the estate.” 5 Collier on Bankruptcy ¶ 502.05[2][a].<sup>3</sup>

39. The Double Payment was not made on account of an antecedent debt, and the Debtors did not receive any adequate consideration in exchange for that transfer. Consequently, the Double Payment is avoidable and recoverable as a constructive fraudulent conveyance pursuant to Bankruptcy Code, section 548(a)(1)(B).

40. “It is well established that a party will be unable to assert a setoff while that party is being sued for fraudulent transfers . . . [t]his is because . . . there is no mutuality of obligations, which is required under Code Section 553(a).” OPM, 35 B.R. at 868. This well established principle operates to defeat the Motion.

### **CONCLUSION**

41. Based on the foregoing, Furukawa has not and cannot establish cause for relief from the automatic stay to allow it to permit a setoff against the Double Payment, and the Motion should be denied in its entirety.

### **Notice**

42. Notice of this Objection has been provided in accordance with the Order under 11 U.S.C. §§ 102(1) and 105 and Fed. R. Bankr. P. 2002(m), 9006, 9007, and 9014 Establishing (i) Omnibus Hearing Dates, (ii) Certain Notice, Case Management, and Administrative Procedures, and (iii) Scheduling an Initial Case Conference in Accordance with Local Bankr. R. 1007-2(e), which was entered by this Court on

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<sup>3</sup> The commencement or pendency of an adversary proceeding against a creditor is not a condition precedent to the disallowance, at least temporarily, of that creditor's claims pursuant to Bankruptcy Code  
(footnote continued on the following page)



October 14, 2005 (Docket No. 245). In light of the nature of the relief requested, the Debtors submit that no other or further notice is necessary.

**Memorandum Of Law**

43. Because the legal points and authorities upon which this Objection relies are incorporated herein, the Debtors respectfully request that the requirement of the service and filing of a separate memorandum of law under Local Rule 9013-1(b) be deemed satisfied.

**WHEREFORE**, the Debtors respectfully request that the Court enter an Order denying the Motion, together with such other and further relief as may be just and proper.

Dated: New York, New York  
February 2, 2006

DELPHI CORPORATION, *et al.*  
By their attorneys,  
TOGUT, SEGAL & SEGAL LLP  
By:

/s/Neil Berger  
ALBERT TOGUT (AT-9759)  
NEIL BERGER (NB-3599)  
Members of the Firm  
One Penn Plaza  
New York, New York 10119  
(212) 594-5000

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section 502(d). See *In re Mid Atlantic Fund, Inc.*, 60 B.R. 604, 609-11 (Bankr. S.D.N.Y. 1986), see also *In re KF Dairies, Inc.*, 143 B.R. 734, 735-38 (B.A.P. 9th Cir. 1992).

TOGUT, SEGAL & SEGAL LLP  
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<http://www.delphidocket.com>

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

HEARING DATE: 2/9/06  
AT: 10:00 A.M.

-----X	:	
In re:	:	
	:	
DELPHI CORPORATION, <i>et al.</i> ,	:	Chapter 11
	:	Case No. 05-44481 [RDD]
	:	
Debtors.	:	Jointly Administered
	:	
-----X	:	

**AFFIRMATION OF DANA F. FIDLER  
IN SUPPORT OF DEBTORS' OBJECTION TO  
MOTION BY FURUKAWA NORTH AMERICA APD FOR  
RELIEF FROM AUTOMATIC STAY TO PERMIT SETOFF OF CLAIMS**

STATE OF MICHIGAN                    )  
  ):  
COUNTY OF OAKLAND                )

DANA F. FIDLER, affirms under penalty of perjury as follows:

1. I am the Director – Financial Processes & Services of Delphi Corporation (“Delphi”), debtor and debtor-in-possession in the above-captioned chapter 11 cases. I am familiar with the Debtors’ operations and their process of supplier payments. I have held this general position in Delphi since 1999 and

have worked in financial shared service organizations for various Fortune 500 companies for over 15 years. I have a Bachelor of Science degree in Accounting from Virginia Polytechnic Institute and State University. I have personal knowledge of the facts stated in this Affirmation and I can testify to those facts in court if necessary on behalf of the Debtors.

2. Delphi is one of the world's largest suppliers of automotive components and electronics. Across the globe, Delphi operates over 40 domestic and 160 foreign entities in approximately 40 countries, employing more than 185,000 employees worldwide.

3. In my present position, I have responsibility for oversight and service performance of North American Shared Financial Services, which includes disbursement payments to suppliers. In addition, I am responsible for financial oversight of customer setoff requests, which includes analyzing payments made by the Debtors, including Delphi Automotive Systems LLC and certain other Debtors who utilize centralized disbursement services.

4. I am one of the people who has access to and custody of Delphi's business records (including access to electronically stored data) concerning Delphi's dealings with Furukawa Electric North America APD ("Furukawa"). These records are kept in the ordinary course of Delphi's regularly conducted business activity, which is Delphi's customary practice. I have reviewed Delphi's files on Furukawa, which leads me to the summary set forth below. All documents attached are true and correct copies of the business records described above. All facts set forth herein are either (a) facts of which I have personal knowledge; or (b) an accurate summary of Delphi's business records as described above.

5. Furukawa supplies the Debtors with SIR coils and connection systems pursuant to various purchase orders and supply contracts.

6. In response to demands by Furukawa, on or about September 14, 2005, the Debtors made a wire payment of \$2,832,045.42 to Furukawa, noting in the Wire Request Form, "Vendor refusing to ship due to press release" (the "September 14 Payment"). *See* Exhibit 1.

7. The September 14 Payment represented a gross payment of \$2,860,651.94, less a 1% early payment discount and it satisfied payment for invoices for goods that were previously shipped to the Debtors (the "Invoices").

8. As a result of Furukawa's insistence that the September 14 Payment be made and a failure of the Debtors to have recorded that payment of the Invoices in their payables system, on or about October 4, 2005, the Debtors made an electronic funds transfer (EFT) payment of \$2,826,506.66 to Furukawa, *i.e.* the Double Payment, for the actual materials received in the normal course of disbursement processing.

9. The Double Payment was remitted by the Debtors against the same Invoices that had already been paid with the September 14 Payment.

10. The September 14 Payment and the Double Payment were in slightly different amounts only because one invoice for approximately \$34,000 was not included in the second payment, and the Double Payment did not take credit for a prompt-payment discount.

11. Four days later, on October 8, the Debtors filed their petitions in this Court. The Debtors never provided any instructions to Furukawa regarding how to handle the Double Payment.

12. I affirm under penalty of perjury according to the laws of the United States that the foregoing statements are true and correct.

Executed this 1st day of February, 2006 in Rochester, Michigan

/s/ Dana F. Fidler

DANA F. FIDLER

Wire Request Form

CIM# 12403294

VENDOR CODE: WT-

FRS#

PAYEE: Furukawa  
47677 Galleon Dr  
Plymouth, MI 48170

Today's Date: 9/13/2005

PAYMENT Date: 9/13/2005

CURRENCY TYPE:

EUR

AMOUNT:

2,832,045.42

AMOUNT: Two million eight hundred thirty two thousand forty five dollars & 42/100

WIRE TRANSFER INSTRUCTIONS

BNK NAME: Union Bank

ABA: 122000496

BNK ADDR: 1980 Saturn St. Monterey Park, Ca 91755

ACCT: 6920001198

BENEFICIARY:

Furukawa

DESCRIPTION:

Vendor refusing to ship due to press release.

GRP	CL	GL SUFF	GMAPP	CORP SUB	LOC SUFF.	PROD	AMOUNT
(2)	(4)	(5)	(5)	(3)	(3)	(4)	
K9	2685	00000	00006	000	000	0000	2,832,045.42
K9							
TOTAL							2,832,045.42

REQUESTED BY:

Dawn Buckner

PHONE:

(989) 757-5971

FAX:

(989) 757-5974

1ST APPROVAL

[Signature]

SENT TO:

Wire Desk

PHONE:

602-797-5061 / 5093

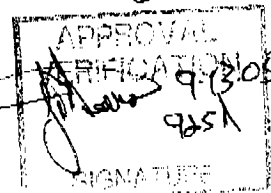
FAX:

602-797-6574

2ND APPROVAL

[Signature]

Dawn Buckner



## **EXHIBIT F**

**Hearing Date: February 9, 2006**  
**Hearing Time: 10:00 a.m. (Prevailing Eastern Time)**

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	x	
	:	
In re	:	Chapter 11
	:	
DELPHI CORPORATION, <u>et al.</u> ,	:	Case No. 05-44481 (RDD)
	:	
Debtors.	:	(Jointly Administered)
	:	
-----	x	

DEBTORS' OBJECTION TO MOTION FOR ORDER UNDER 11 U.S.C. § 365(d)(2)  
DIRECTING DEBTOR DELPHI AUTOMOTIVE SYSTEMS, LLC TO DETERMINE  
WITHIN 150 DAYS WHETHER TO ASSUME OR REJECT ITS NONRESIDENTIAL  
REAL PROPERTY LEASE WITH CHEROKEE NORTH KANSAS CITY, LLC



Delphi Corporation ("Delphi") and certain of its subsidiaries and affiliates (the "Affiliate Debtors"), debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors"), hereby submit this objection (the "Objection") to the Motion for Order Under 11 U.S.C. § 365(d)(2) Directing Debtor Delphi Automotive Systems, LLC to Determine Within 150 Days Whether to Assume or Reject Its Nonresidential Real Property Lease with Cherokee North Kansas City, LLC (the "Motion"). In support of this Objection, the Debtors respectfully represent as follows:<sup>1</sup>

Preliminary Statement

1. The Motion should be denied. Cherokee North Kansas City, LLC ("Cherokee") failed to show that "cause" exists for a shortening of the deadline as set forth in the Motion and Cherokee is estopped from seeking the relief requested in the Motion because Cherokee failed to raise these issues in a timely manner. On or about November 9, 2005, the Debtors filed with the Court, and served upon Cherokee, their motion seeking to extend to June 7, 2007 the deadline for the Debtors to assume or reject all leases of nonresidential real property under Section 365(d)(4) of the Bankruptcy Code (the "365(d)(4) Motion"). Among the leases affected by the 365(d)(4) Motion was the Lease of Industrial or Warehouse Facilities between the Debtors and Cherokee (the "Lease"). Notice was proper as evidenced by the certificate of service, the relevant portion of which is attached hereto as Exhibit A. Cherokee did not object to the 365(d)(4) Motion and on November 29, 2005, the Court entered an order granting the 365(d)(4) Motion (the "365(d)(4) Order"), a copy of which is attached hereto as Exhibit B.

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<sup>1</sup> Capitalized terms used but not defined herein have the meanings ascribed to them in the Motion.

2. Cherokee's Motion fails to show that "cause" exists for a shortening of the June 7, 2007 deadline approved by the 365(d)(4) Order (the "365(d)(4) Deadline"). The burden rests with Cherokee to show that sufficient cause exists to shorten the 365(d)(4) Deadline and Cherokee has failed to satisfy its burden. In the Motion, Cherokee recites several factors to support its position. None of those factors, however, individually or collectively, rises to a level sufficient to show cause to justify a shortening of the 365(d)(4) Deadline. Distilled to its essence, the Motion asserts that the 365(d)(4) Deadline should be shortened because the property subject to the Lease may be worth less and the cost of financing may be greater on account of the fact that the Debtors sought bankruptcy protection –a challenge faced by all landlords that have tenants in bankruptcy. These assertions, which lack sufficient evidentiary support, clearly fall short of the required showing of cause necessary to justify shortening of the 365(d)(4) Deadline.

3. Moreover, Cherokee is estopped from requesting such relief because its Motion is premised entirely on facts that were known or knowable at the time the 365(d)(4) Motion was filed and served upon Cherokee. Even though Cherokee had the opportunity and failed to object to the 365(d)(4) Motion, it nonetheless now asks this Court to ignore the 365(d)(4) Order –entered less than two months ago– and compel the Debtors to assume or reject the Lease.

4. For the foregoing reasons and as set forth in more detail below, the Motion should be denied.

#### Argument

A. Cherokee Has Failed To Show "Cause" Sufficient To Justify Shortening The 365(d)(4) Deadline.

5. At the November 29, 2005 omnibus hearing the Debtors made a sufficient showing of cause, as required by section 365(d)(4) of the Bankruptcy Code, and the Court granted the 365(d)(4) Motion and entered the 365(d)(4) Order. Paragraph 4(b) of the 365(d)(4)

Order provides that "entry of this Order shall be without prejudice to . . . (b) the right of any party to any Real Property Lease to seek from this Court a shortening of the [June 7, 2007] deadline with respect to any or all of its Real Property Leases for cause shown." Pursuant to this Court's order and as similarly provided under § 365(d)(4) of the Bankruptcy Code, the burden now rests with Cherokee to demonstrate cause for shortening of the 365(d)(4) Deadline.

6. The term "cause" as used in section 365(d)(4) is not defined in the Bankruptcy Code. In order to meet its burden to show cause, however, Cherokee must satisfy the factors enumerated by the United States Court of Appeals for the Second Circuit in South Street Seaport L.P. v. Burger Boys, Inc., 94 F.3d 755 (2d Cir. 1996). The Burger Boys court held that the following factors should be weighed in determining this issue:

- (a) whether the debtor was paying for the use of the property;
- (b) whether the debtor's continued occupation could damage the lessor beyond the compensation available under the Bankruptcy Code;
- (c) whether the lease is the debtor's primary asset; and
- (d) whether the debtor has had sufficient time to formulate a plan of reorganization.

Id. at 761. The Burger Boys court proceeded to enumerate additional factors that may merit consideration by a court, including the complexity of the case and the number of leases that the debtor must evaluate. Id. See also 130 Cong. Rec. S8891, 58,894-95 (daily ed. June 29, 1984) ("cause" includes large number of leases) (statement of Sen. Hatch), reprinted in 1984 U.S.C.C.A.N. 590, 597; In re Unit Portions of Del., Inc., 53 B.R. 83, 85 (Bankr. E.D.N.Y. 1985).

7. Similarly, Courts considering demands for early assumption or rejection by non-debtor parties rarely force a debtor into prematurely making a decision. The reason for courts' reluctance to force early assumption or rejection is that the "interests of the creditors collectively and the bankrupt estate as a whole will not yield easily to the convenience or

advantage of one creditor." See Public Svc. Co. of New Hampshire v. New Hampshire Elec. Coop., Inc. (In re Public Svc. Co. of New Hampshire ), 884 F.2d 11, 14-15 (1st Cir. 1989); see also In re Midtown Skating Corp., 3 B.R. 194, 198 (Bankr. S.D.N.Y. 1980) (denying motion to compel assumption of lease and stating that "debtor should not be expected to jump too soon into this complex matter"); see also; Hiser v. Blue Cross of Greater Philadelphia (In re St. Mary Hosp.), 89 B.R. 503, 513-14 (Bankr. E.D.Pa. 1988) ("the interests of the Debtor here in denying a precipitous assumption or rejection appear to us much greater than the interests of HHS in forcing a prompt resolution"). Accordingly, under most circumstances, it is the clear policy of the Bankruptcy Code to provide the debtor with breathing space following the filing of a bankruptcy petition in which to decide whether to assume or reject an unexpired lease of nonresidential real property. In re Midtown Skating Corp., 3 B.R. at 198; see also In re Enron Corp., 279 B.R. 695, 702 (Bankr. S.D.N.Y. 2002) (citation omitted).

8. Cherokee, in its Motion, had the burden to show that cause exists to shorten the 365(d)(4) Deadline by satisfying the factors set forth by the Burger Boys court. A brief review of the factors will clearly indicate that Cherokee has failed in its burden to show cause.

(i) The Debtors Are Continuing To Pay For The Use Of The Property.

9. As acknowledged by Cherokee in its Motion, the Debtors are current in all of their postpetition obligations under the Lease. Moreover, the Debtors have significant resources, including access to a substantial DIP credit facility, which provide adequate assurance to all of their landlords that they will be paid their postpetition bills in a timely fashion.

(ii) Cherokee Will Not Suffer Any Harm Beyond Compensation Available Under The Bankruptcy Code Because Of The Debtors Continued Occupation.

10. There is no harm beyond compensation available under the Bankruptcy Code that will befall Cherokee if the 365(d)(4) Deadline is not shortened. As stated above, the Debtors are performing all of their postpetition obligations under the Lease and will continue to do so. According to Cherokee, however, this is not enough. In the Motion, Cherokee asserts that if the 365(d)(4) Deadline is not shortened it will face uncompensable damages in the form of decreased value of the property and higher financing costs. This argument is without merit. Cherokee's entire argument is premised on its assertion that the property would be worth more and financing terms would cost less if the Debtors are forced to make a premature assumption or rejection decision. Cherokee assumes that uncertainty would be eliminated, resulting in an increased property value and decreased costs of financing, regardless of whether the Debtors assume or reject the Lease. Uncertainty will surely result if the Lease is rejected. At the least, Cherokee would be forced to find a new tenant and would be faced with the loss of rental income, which according to Cherokee makes up approximately half of the income associated with the property. With this substantial uncertainty in the event of rejection, it is hard to believe that property value would increase 25%-40% and better financing terms would be immediately available. Indeed, Cherokee has provided limited evidence to support this assertion. The harm, if any, that Cherokee faces does not rise to a level sufficient to justify shortening the 365(d)(4) Deadline.

(iii) The Lease Is Among The Debtors Primary Assets.

11. In the Motion, Cherokee claims that "[b]ased upon the Debtors' previous representations to this Court in its filings, the decision whether or not to assume or reject the Lease is not a 'make or break' decision for the Debtor-Lessee." Motion ¶ 27. This statement is

disingenuous and fails to cite any pleading or hearing at which such assertions were made by the Debtors.

12. Contrary to Cherokee's unsupported assertions, most of the Debtors' leases are fundamental to their reorganization efforts. As part of the Debtors' restructuring efforts, the Debtors are in the process of evaluating all owned and leased real estate, including the Lease. In considering their options with respect to the real property leases, the Debtors are evaluating a variety of factors to determine whether it is appropriate to assume, assume and assign, or reject a particular real property lease, including, without limitation, the realignment of Delphi's global product portfolio and manufacturing footprint to preserve Delphi's core businesses.

13. This evaluation will allow the Debtors to determine those leases that will remain a part of Delphi's core operations. As determinations are made that certain leases will not be part of Delphi's ongoing operations, the Debtors will then evaluate whether such leases should be assumed and assigned or rejected. Until the Debtors complete this evaluation, shortening the 365(d)(4) Deadline could force the Debtors, prematurely, to assume substantial, long-term liabilities under the Lease or forfeit value on account of a marketable or otherwise necessary lease. Indeed, in the instant case, the Debtors manufacture certain automotive parts for GM at the Lease facility. The Debtors have not yet determined if the production of these parts will remain part of the Debtors' global product portfolio. Accordingly, if the Debtors prematurely assume the Lease and later stop producing these parts, the estates may be burdened with long term liabilities unnecessary to the Debtors' reorganization or may be faced with substantial administrative expenses if the Lease is later rejected after assumption. On the other hand, if the Debtors determine to keep this business, premature rejection of the Lease could result in the inability of the Debtors to produce these parts for GM which could then result in substantial

damages and the loss of continued business. Accordingly, the Debtors should not be forced to assume or reject the Lease until many of these issues are resolved.

(iv) The Debtors Have Not Had Sufficient Time To Formulate A Plan Of Reorganization.

14. Prior to making critical assumption or rejection decisions, a debtor must be permitted "the leeway needed to appraise its financial situation and the potential value of its assets in terms of the formulation of a plan." Theatre Holding Corp. v. Mauro, 681 F.2d at 102, 104 (2d Cir. 1982); see also In re Teligent, Inc., 268 B.R. 723, 739 (Bankr. S.D.N.Y. 2001). As stated above, the Debtors are merely four months into a restructuring effort that they anticipate will take approximately 18 months to complete. At this point, however, the Debtors' energies are focused on stabilizing their businesses. The Debtors have not had time to make critical decisions regarding the assumption or rejection of their leases. The Debtors need to focus on developing a comprehensive restructuring plan for their businesses and the tens of thousands of creditors in these cases.

15. In the Motion, Cherokee attempts to impose its own judgment upon the Debtors regarding the Lease. Cherokee claims that the Debtors' operation at the Lease facility "is excellent, is able to attract new business, and has low costs." Motion ¶¶ 13, 20. These conclusions were apparently based on a conversation with the Debtors' plant manager at the Lease facility and not with management responsible for making strategic decisions in connection with the Debtors' restructuring efforts. Cherokee's conclusions are simply an attempt to substitute its own judgment in place of the Debtors' and such conclusions are not logical in light of the fact that the Debtors have not made final determinations regarding the realignment of Delphi's global product portfolio and manufacturing footprint. These arguments should be given no weight.

16. Further, every creditor in these cases that is a party to an unexpired lease or executory contract could make an argument similar to Cherokee's, that its financial situation would be better if the Debtors were forced to make certain decisions now. Forcing the Debtors to assume or reject a lease on this basis, however, would simply benefit Cherokee to the potential detriment of all other creditors. The Debtors cannot, and should not, be forced into preemptory lease assumption and rejection decisions at this time.

(v) The Complexity And Size Of The Debtors' Chapter 11 Filings Warrant A Considerable Period In Which To Evaluate The Consequences Associated With Assumption Or Rejection Of All Leases.

17. The complexity and size of these cases also warrant denial of the Motion at this early stage. The complexity of the issues that the Debtors face in stabilizing their businesses and attempting to restructure their affairs is magnified by the size of these cases, currently among the largest pending before any bankruptcy court in the United States. In summary:

- (a) Delphi and 41 affiliated entities sought chapter 11 relief.
- (b) As of the commencement of these chapter 11 cases, the Debtors employed approximately 180,000 employees worldwide. The Debtors' 50,600 U.S. employees work in approximately 44 manufacturing sites, 13 technical centers, and Delphi's Troy, Michigan worldwide headquarters. The company's foreign entities employed more than 134,000 people supporting 120 manufacturing sites and 20 technical centers in nearly 40 countries around the globe.
- (c) The Debtors' global 2004 revenues were approximately \$28.6 billion, and global assets as of August 31, 2005 were approximately \$17.1 billion.
- (d) The Debtors supply products to nearly every major global automotive original equipment manufacturer, with 2004 sales to the Debtors' former parent, General Motors Corporation, equaling approximately \$15.4 billion and sales to each of Ford Motor Company, DaimlerChrysler Corporation, Renault/Nissan Motor Company, Ltd., and Volkswagen Group exceeding \$850 million.



18. Courts have recognized that complex cases require a more careful and extended consideration by the debtor of whether to assume or reject leases. See In re Burger Boys, Inc., 94 F.3d at 761.

B. Cherokee Should Be Estopped From Seeking The Relief Requested In The Motion.

19. The doctrine of collateral estoppel or issue preclusion bars the re-litigation of issues decided by final order. Gibraltar Industries, Inc. v. Douds (In re Douds), 327 B.R. 122, 124 (Bankr. W.D.N.Y. 2005); see also Atkins v. Fiberglass Representatives (In re Atkins), 134 B.R. 936, 938 (9th Cir.1992) ("Principles of res judicata and collateral estoppel" preclude litigants from challenging merits of bankruptcy court order that he failed to appeal within 10 days of entry). Moreover, after an order has become final, parties are precluded from litigating all issues that were or could have been addressed in the context of the proceeding resulting in the final order. Jacobson v. Fireman's Fund Ins. Co., 111 F.3d 261, 268 (2d Cir. 1997) (holding that after time to appeal had expired court's determinations became final and "precluded any further litigation of all issues that were or could have been addressed within the context of that arbitration proceeding").

20. As stated above, on or around November 9, 2005, the Debtors filed the 365(d)(4) Motion with the Court and served it upon Cherokee. Cherokee did not object to the 365(d)(4) Motion. At the November 29, 2005 hearing, the Court heard the 365(d)(4) Motion, and again Cherokee made no objection. On November 29, 2005, the Court entered the 365(d)(4) Order with respect to the Lease and roughly 90 other unexpired leases, extending to June 7, 2007 the deadline for the Debtors to assume or reject such leases, including Cherokee's Lease.

21. Cherokee had the opportunity between November 9, 2005 and November 29, 2005 to object to the 365(d)(4) Motion and had from November 29, 2005 to December 9,

2005 to appeal the 365(d)(4) Order and raise the arguments that it now raises. Cherokee chose not to do so. All the arguments made in the Motion are premised entirely on facts that were known or knowable at the time the 365(d)(4) Motion was filed and served upon Cherokee. Cherokee should not be awarded a "second bite at the apple" now to assert arguments that existed at the time Cherokee chose not to object to the 365(d)(4) Motion. See Jacobson, 111 F.3d at 268. Cherokee should be estopped from attempting to circumvent the 365(d)(4) Order at this time and the Motion should be denied.

#### Conclusion

22. Cherokee has failed to show that cause exists for a shortening of the 365(d)(4) Deadline. Additionally, Cherokee is estopped from seeking the relief requested in the Motion because Cherokee failed to raise those issues in a timely manner. The Debtors should be afforded the time between now and the 365(d)(4) Deadline to determine whether to assume or reject their non-expiring executory contracts. The Motion should therefore be denied.

#### Notice

23. Notice of this Objection has been provided in accordance with the Order under 11 U.S.C. §§ 102(1) and 105 and Fed. R. Bankr. P. 2002(m), 9006, 9007, and 9014 Establishing (i) Omnibus Hearing Dates, (ii) Certain Notice, Case Management, and Administrative Procedures, and (iii) Scheduling an Initial Case Conference in Accordance with Local Bankr. R. 1007-2(e), which was entered by this Court on October 14, 2005 (Docket No. 245). In light of the nature of the relief requested, the Debtors submit that no other or further notice is necessary.

Memorandum Of Law

24. Because the legal points and authorities upon which this Objection relies are incorporated herein, the Debtors respectfully request that the requirement of the service and filing of a separate memorandum of law under Local Rule 9013-1(b) be deemed satisfied.

WHEREFORE, the Debtors respectfully request that the court enter an order (a) denying the Motion and (b) granting the Debtors such other and further relief as is just.

Dated: New York, New York  
February 2, 2006

SKADDEN, ARPS, SLATE, MEAGHER  
& FLOM LLP

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John Wm. Butler, Jr. (JB 4711)  
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- and -

By: /s/ Kayalyn A. Marafioti  
Kayalyn A. Marafioti (KM 9632)  
Thomas J. Matz (TM 5986)  
Four Times Square  
New York, New York 10036  
(212) 735-3000

Attorneys for Delphi Corporation, et al.,  
Debtors and Debtors-in-Possession

**IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

	x	
	:	
In re	:	Chapter 11
	:	
DELPHI CORPORATION <u>et al.</u> ,	:	Case No. 05-44481 (rdd)
	:	
Debtors.	:	(Jointly Administered)
	:	
	x	

**AFFIDAVIT OF SERVICE**

I, Amber M. Cerveney, being duly sworn according to law, deposes and says that I am employed by Kurtzman Carson Consultants, LLC, proposed claims and noticing agent for the Debtors in the above-captioned cases.

On November 9, 2005, I caused to be served, via overnight delivery the documents listed in Section 1 on the parties attached hereto as Exhibit A, via Electronic Notification the parties attached hereto as Exhibit B, and via first class US mail on the parties attached hereto as Exhibit C:

**Section 1**

- I. Motion for Order Under 11 U.S.C. § 365(d)(4) Extending Deadline to Assume or Reject Leases of Nonresidential Real Property ("365(d)(4) Deadline Extension Motion") (Docket No. 995) [Attached hereto as Exhibit D]**
  
- II. Motion for Order Under 11 U.S.C. §§ 105(a) and 365 Authorizing the Debtors to Obtain Preferential Power Rates Pursuant to Letter Agreement With Niagra Mohawk Power Corporation and Assumption Thereof ("Motion to Obtain Preferential Power Rates With Niagra Mohawk Letter Agreement") (Docket No. 997) [Attached hereto as Exhibit E]**
  
- III. Motion for Order Under 11 U.S.C. §§ 105(a), 363, and 365 Authorizing the Debtors to Preserve Option to Enter Into New Power Contract with Preferential Rates with Consumer Energy Company and Ancillary Assumption of Related Power Contracts ("Motion to Preserve Preferential Rates With CEC") (Docket No. 998) [Attached hereto as Exhibit F]**
  
- IV. Application for Order Under 11 U.S.C. §§ 327(a) 328 and Fed.R.Bankr.P. 2014(a) Authorizing Employment and Retention of Jones Lang Lasalle Americas Inc., as Real Estate Administrative and Transaction Services Provider to Debtors ("JLL Retention Application") (Docket No. 996) [Attached hereto as Exhibit G]**
  
- V. Debtors' Application for Entry of Order Under 11 U.S.C. §§ 327(e) and 1107(b) Authorizing Employment and Retention of Wilmer Cutler Pickering Hale and Dorr**

LLP as Special Regulatory Counsel ("WCPHD Retention Application") (**Docket No. 999**) [**Attached hereto as Exhibit H**]

On November 9, 2005, I caused to be served, via overnight delivery the documents listed in Section 2 on the parties attached hereto as Exhibit I:

**Section 2**

- I. Motion for Order Under 11 U.S.C. § 365(d)(4) Extending Deadline to Assume or Reject Leases of Nonresidential Real Property ("365(d)(4) Deadline Extension Motion") (**Docket No. 995**) [**Attached hereto as Exhibit D**]

On November 9, 2005, I caused to be served, via overnight delivery the documents listed in Section 3 on the parties attached hereto as Exhibit J:

**Section 3**

- I. Motion for Order Under 11 U.S.C. §§ 105(a) and 365 Authorizing the Debtors to Obtain Preferential Power Rates Pursuant to Letter Agreement With Niagra Mohawk Power Corporation and Assumption Thereof ("Motion to Obtain Preferential Power Rates With Niagra Mohawk Letter Agreement") (**Docket No. 997**) [**Attached hereto as Exhibit E**]

On November 9, 2005, I caused to be served, via overnight delivery and Electronic Notification the documents listed in Section 4 on the parties attached hereto as Exhibit K:

**Section 4**

- I. Motion for Order Under 11 U.S.C. §§ 105(a), 363, and 365 Authorizing the Debtors to Preserve Option to Enter Into New Power Contract with Preferential Rates with Consumer Energy Company and Ancillary Assumption of Related Power Contracts ("Motion to Preserve Preferential Rates With CEC") (**Docket No. 998**) [**Attached hereto as Exhibit F**]

Dated: November 10, 2005

/s/ Amber M. Cervený

Amber M. Cervený

Sworn to and subscribed before  
me on November 10, 2005

/s/ Evan J. Gershbein  
Notary Public

My Commission Expires: 1/19/07

## **EXHIBIT D**

**Hearing Date and Time: November 29, 2005 at 10:00 a.m.**  
**Objection Deadline: November 22, 2005 at 4:00 p.m.**

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
333 West Wacker Drive, Suite 2100  
Chicago, Illinois 60606  
(312) 407-0700  
John Wm. Butler, Jr. (JB 4711)  
John K. Lyons (JL 4951)  
Ron E. Meisler (RM 3026)

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Delphi Legal Information Website:  
<http://www.delphidocket.com>

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:	
In re	:	Chapter 11
	:	
DELPHI CORPORATION, <u>et al.</u> ,	:	Case No. 05-44481 (RDD)
	:	
Debtors.	:	(Jointly Administered)
	:	
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NOTICE OF MOTION FOR ORDER UNDER 11 U.S.C. § 365(d)(4)  
EXTENDING DEADLINE TO ASSUME OR REJECT  
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY

PLEASE TAKE NOTICE that on November 9, 2005, Delphi Corporation ("Delphi") and certain of its subsidiaries and affiliates, debtors and debtors-in-possession in the above-captioned cases, filed the Motion For Order Under 11 U.S.C. § 365(d)(4) Extending Deadline To Assume Or Reject Unexpired Leases Of Nonresidential Real Property (the "Motion").

PLEASE TAKE FURTHER NOTICE that a hearing to consider approval of the Motion will be held on November 29, 2005, at 10:00 a.m. (Prevailing Eastern Time) (the "Hearing") before the Honorable Robert D. Drain, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, Room 610, New York, New York, 10004.

PLEASE TAKE FURTHER NOTICE that objections, if any, to approval of the Motion (a) must be in writing, (b) must conform to the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York and the Order Under 11 U.S.C. §§ 102 (1) And 105 And Fed. R. Bankr. P. 2002(m), 9006, 9007, And 9014 Establishing (I) Omnibus Hearing Dates, (II) Certain Notice, Case Management, And Administrative Procedures, And (III) Scheduling An Initial Case Conference In Accordance With Local Bankr. R. 1007-2(e) (the "Case Management Order") (Docket No. 245), (c) must be filed with the Bankruptcy Court in accordance with General Order M-242 (as amended) – registered users of the Bankruptcy Court's case filing system must file electronically, and all other parties-in-interest must file on a 3.5 inch disk (preferably in



Portable Document Format (PDF), WordPerfect, or any other Windows-based word processing format), (d) must be submitted in hard-copy form directly to the chambers of the Honorable Robert D. Drain, United States Bankruptcy Judge, and (e) and must be served upon (i) Delphi Corporation, 5725 Delphi Drive, Troy, Michigan 48098 (Att'n: General Counsel), (ii) counsel to the Debtors, Skadden, Arps, Slate, Meagher & Flom LLP, 333 West Wacker Drive, Suite 2100, Chicago, Illinois 60606 (Att'n: John Wm. Butler, Jr.), (iii) counsel for the agent under the Debtors' prepetition credit facility, Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, New York 10017 (Att'n: Kenneth S. Ziman), (iv) counsel for the agent under the Debtors' postpetition credit facility, Davis Polk & Wardell, 450 Lexington Avenue, New York, New York 10017 (Att'n: Marlane Melican), (v) counsel for the official committee of unsecured creditors, Latham & Watkins, 885 Third Avenue, New York, New York, 10022 (Att'n: Robert J. Rosenberg and Mark A. Broude), and (vi) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, Suite 2100, New York, New York 10004 (Att'n: Alicia M. Leonhard), in each case so as to be **received** no later than **4:00 p.m. (Prevailing Eastern Time)** on **November 22, 2005** (the "Objection Deadline").

PLEASE TAKE FURTHER NOTICE that only those objections made in writing, in accordance with the Case Management Order, and timely filed and received by the Objection Deadline will be considered by the Bankruptcy Court at the Hearing. If no objections to the Motion are timely filed and served in accordance with the procedures set forth herein, the Bankruptcy Court may enter an order granting the Motion **without further notice**.

Dated: New York, New York  
November 9, 2005

SKADDEN, ARPS, SLATE, MEAGHER  
& FLOM LLP

By: /s/ John Wm. Butler, Jr.  
John Wm. Butler, Jr. (JB 4711)  
John K. Lyons (JL 4951)  
Ron E. Meisler (RM 3026)  
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Chicago, Illinois 60606  
(312) 407-0700

- and -

By: /s/ Kayalyn A. Marafioti  
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Attorneys for Delphi Corporation, et al.,  
Debtors and Debtors-in-Possession

Hearing Date and Time: November 29, 2005 at 10:00 a.m.  
Objection Deadline: November 22, 2005 at 4:00 p.m.

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:	
In re	:	Chapter 11
	:	
DELPHI CORPORATION, <u>et al.</u> ,	:	Case No. 05-44481 (RDD)
	:	
	:	(Jointly Administered)
Debtors.	:	
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**MOTION FOR ORDER UNDER 11 U.S.C. § 365(d)(4) EXTENDING DEADLINE TO  
ASSUME OR REJECT LEASES OF NONRESIDENTIAL REAL PROPERTY**

**("365(d)(4) DEADLINE EXTENSION MOTION")**

Delphi Corporation ("Delphi") and certain of its subsidiaries and affiliates (the "Affiliate Debtors"), debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors"), hereby submit this motion (the "Motion") for an order under 11 U.S.C. § 365(d)(4) extending the deadline to assume or reject unexpired leases of nonresidential real property. In support of this Motion, the Debtors respectfully represent as follows:

**Background**

**A. The Chapter 11 Filings**

1. On October 8, 2005, Delphi and certain of its U.S. subsidiaries (the "Initial Filers") filed voluntary petitions in this Court for reorganization relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the "Bankruptcy Code"). On October 14, 2005, three additional U.S. subsidiaries of Delphi (together with the Initial Filers, collectively, the "Debtors") filed voluntary petitions in this Court for reorganization relief under the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. This Court entered orders directing the joint administration of the Debtors' chapter 11 cases (Dockets Nos. 28 and 404).

2. On October 17, 2005, the Office of the United States Trustee (the "U.S. Trustee") appointed an official committee of unsecured creditors (the "Creditors' Committee"). No trustee or examiner has been appointed in the Debtors' cases.

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding under 28 U.S.C. § 157(b)(2).

4. The statutory predicate for the relief requested herein is section 365(d)(4) of the Bankruptcy Code.

B. Current Business Operations Of The Debtors

5. With more than 180,000 employees worldwide, global 2004 revenues of approximately \$28.6 billion, and global assets as of August 31, 2005 of approximately \$17.1 billion,<sup>1</sup> Delphi ranks as the fifth largest public company business reorganization in terms of revenues, and the thirteenth largest public company business reorganization in terms of assets. Delphi's non-U.S. subsidiaries are not chapter 11 debtors, will continue their business operations without supervision from the Bankruptcy Court, and will not be subject to the chapter 11 requirements of the U.S. Bankruptcy Code.

6. Over the past century, the operations which are now owned by Delphi have developed leading global technology innovations with significant engineering resources and technical competencies in a variety of disciplines. Today, the Company (as defined below) is arguably the single largest global supplier of vehicle electronics, transportation components, integrated systems and modules, and other electronic technology. The Company's technologies and products are present in more than 75 million vehicles on the road worldwide. The Company supplies products to nearly every major global automotive original equipment manufacturer with

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<sup>1</sup> The aggregated financial data used in this Motion generally consists of consolidated information from Delphi and its worldwide subsidiaries and affiliates.

2004 sales to its former parent, General Motors Corporation ("General Motors" or "GM"), equaling approximately \$15.4 billion and sales to each of Ford Motor Company, DaimlerChrysler Corporation, Renault/Nissan Motor Company, Ltd., and Volkswagen Group exceeding \$850 million.

7. As part of its growth strategy, Delphi has established an expansive global presence with a network of manufacturing sites, technical centers, sales offices, and joint ventures located in every major region of the world. In the U.S., the Debtors employ approximately 50,600 people. These employees work in approximately 44 manufacturing sites and 13 technical centers across the country, and in Delphi's worldwide headquarters and customer center located in Troy, Michigan. Approximately 34,750 of these individuals are hourly employees, 96% of whom are represented by approximately 49 different international and local unions. Outside the United States, the Company's foreign entities employ more than 134,000 people, supporting 120 manufacturing sites and 20 technical centers across nearly 40 countries worldwide.

8. Delphi was incorporated in Delaware in 1998 as a wholly-owned subsidiary of GM. Prior to January 1, 1999, GM conducted the Company's business through various divisions and subsidiaries. Effective January 1, 1999, the assets and liabilities of these divisions and subsidiaries were transferred to Delphi and its subsidiaries and affiliates (collectively, the "Company") in accordance with the terms of a Master Separation Agreement between Delphi and GM. In connection with these transactions, Delphi accelerated its evolution from a North American-based, captive automotive supplier to a global supplier of components, integrated systems, and modules for a wide range of customers and applications. Although GM

is still the Company's single largest customer, today more than half of Delphi's revenue is generated from non-GM sources.

9. Due to the significant planning that goes into each vehicle model, Delphi's efforts to generate new business do not immediately affect its financial results, because supplier selection in the auto industry is generally finalized several years prior to the start of production of the vehicle. When awarding new business, which is the foundation for the Company's forward revenue base, customers are increasingly concerned with the financial stability of their supply base. The Debtors believe that they will maximize stakeholder value and the Company's future prospects if they stabilize their businesses and continue to diversify their customer base. The Debtors also believe that this must be accomplished in advance of the expiration of certain benefit guarantees between GM and certain of Delphi's unions representing most of its U.S. hourly employees which coincides with the expiration of the Company's U.S. collective bargaining agreements in the fall of 2007.

C. Events Leading To Chapter 11 Filing

10. In the first two years following Delphi's separation from GM, the Company generated approximately \$2 billion in net income. Every year thereafter, however, with the exception of 2002, the Company has suffered losses. In calendar year 2004, the Company reported a net operating loss of \$482 million on \$28.6 billion in net sales. Reflective of a downturn in the marketplace, Delphi's financial condition has deteriorated further in the first six months of 2005. The Company experienced net operating losses of \$608 million for the first

six months of calendar year 2005 on six-month net sales of \$13.9 billion, which is approximately \$1 billion less in sales than during the same time period in calendar year 2004.<sup>2</sup>

11. The Debtors believe that three significant issues have largely contributed to the deterioration of the Company's financial performance: (a) increasingly unsustainable U.S. legacy liabilities and operational restrictions driven by collectively bargained agreements, including restrictions preventing the Debtors from exiting non-strategic, non-profitable operations, all of which have the effect of creating largely fixed labor costs, (b) a competitive U.S. vehicle production environment for domestic OEMs resulting in the reduced number of motor vehicles that GM produces annually in the United States and related pricing pressures, and (c) increasing commodity prices.

12. In light of these factors, the Company determined that it would be imprudent and irresponsible to defer addressing and resolving its U.S. legacy liabilities, product portfolio, operational issues, and forward looking revenue requirements. Having concluded that pre-filing discussions with its unions and GM were not leading to the implementation of a plan sufficient to address the Debtors' issues on a timely basis, the Company determined to commence these chapter 11 cases for its U.S. businesses to complete the Debtors' transformation plan and preserve value.

13. Through the reorganization process, the Debtors intend to achieve competitiveness for Delphi's core U.S. operations by modifying or eliminating non-competitive legacy liabilities and burdensome restrictions under current labor agreements and realigning

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<sup>2</sup> Reported net losses in calendar year 2004 were \$4.8 billion, reflecting a \$4.1 billion tax charge, primarily related to the recording of a valuation allowance on the U.S. deferred tax assets as of December 31, 2004.



Delphi's global product portfolio and manufacturing footprint to preserve the Company's core businesses. This will require negotiation with key stakeholders over their respective contributions to the restructuring plan or, absent consensual participation, the utilization of the chapter 11 process to achieve the necessary cost savings and operational effectiveness envisioned in the Company's transformation plan. The Debtors believe that a substantial segment of Delphi's U.S. business operations must be divested, consolidated, or wound-down through the chapter 11 process.

14. Upon the conclusion of this process, the Debtors expect to emerge from chapter 11 as a stronger, more financially sound business with viable U.S. operations that are well-positioned to advance global enterprise objectives. In the meantime, Delphi will marshal all of its resources to continue to deliver value and high-quality products to its customers globally. Additionally, the Company will preserve and continue the strategic growth of its non-U.S. operations and maintain its prominence as the world's premier auto supplier.

Relief Requested

15. By this Motion, the Debtors request entry of an order, pursuant to section 365(d)(4) of the Bankruptcy Code, extending the date on or before which the Debtors may assume or reject unexpired leases of nonresidential real property to and including June 7, 2007, a date which is approximately 18 months from the initial deadline within which the Debtors are required to assume or reject nonresidential real property leases, without prejudice to the Debtors' right to seek a further extension of such deadline and without prejudice to a lessor's right to seek a shortening of such deadline.

Basis For Relief

16. Under section 365(d)(4) of the Bankruptcy Code, the initial 60-day period within which the Debtors must assume or reject nonresidential real property leases expires on December 7, 2005. As of the Petition Date, the Debtors were lessors or lessees with respect to approximately 90 unexpired leases of nonresidential real property (the "Real Property Leases").

17. As part of the Debtors' restructuring efforts, the Debtors are in the process of evaluating all owned and leased real estate, including the Real Property Leases. In considering their options with respect to the Real Property Leases, the Debtors are evaluating a variety of factors to determine whether it is appropriate to assume, assume and assign, or reject a particular Real Property Lease. In most instances, however, before the Debtors can properly evaluate which of their Real Property Leases to assume and which to reject, among other things, the Debtors must first (a) conclude their negotiations with their unions to ease certain "no-close" restrictions in the Debtors' collective bargaining agreements ("CBAs") and (b) make final determinations as to the company's ultimate product portfolio, which will affect the location of the Debtors' facilities.

18. In particular, the Debtors are currently negotiating certain terms of the CBAs, including, without limitation, operational restrictions, which prevent the Debtors from exiting non-strategic, non-profitable operations and restrict the Debtors ability to permanently lay off idled workers for whom the Debtors must provide space during the working hours. A large number of the Debtors' Real Property Leases are affected by these terms and therefore at this time the Debtors are unable to determine which leases should be assumed and which should

be rejected. Accordingly, until these issues are resolved, it would be premature for the Debtors to assume or reject all of the Real Property Leases.

19. Moreover, through the reorganization process, the Debtors intend to achieve competitiveness for Delphi's core U.S. operations by realigning Delphi's global product portfolio and manufacturing footprint to preserve the Debtors' core businesses. These determinations will affect the Debtors' evaluation of which of their Real Property Leases to assume and which to reject. The Debtors are striving to meet these goals and emerge from chapter 11 by early to mid-2007.

20. Thus, by this Motion, the Debtors request an extension of the section 365(d)(4) deadline so as to fully and adequately determine whether to assume or reject particular Real Property Leases. If the period, under section 365(d)(4) the Bankruptcy Code, is not extended beyond December 7, 2005, the Debtors may be compelled, prematurely, to assume substantial, long-term liabilities under the Real Property Leases or forfeit benefits associated with some Real Property Leases to the detriment of the Debtors' ability to operate and preserve the going-concern value of their business for the benefit of all creditors and other parties-in-interest.

Applicable Authority

21. Section 365(d)(4) of the Bankruptcy Code provides:

Notwithstanding paragraphs (1) and (2), in a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is the lessee within 60 days after the date of the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such lease is deemed rejected, and the trustee shall immediately surrender such nonresidential real property to the lessor.

11 U.S.C. § 365(d)(4) (emphasis added).

22. The term "cause" as used in section 365(d)(4) is not defined in the Bankruptcy Code. In South Street Seaport L.P. v. Burger Boys, Inc., 94 F.3d 755 (2d Cir. 1996), the United States Court of Appeals for the Second Circuit held that the following factors would establish whether "cause" existed to extend the statutory period under section 365(d)(4) of the Bankruptcy Code:

- (a) whether the debtor was paying for the use of the property;
- (b) whether the debtor's continued occupation could damage the lessor beyond the compensation available under the Bankruptcy Code;
- (c) whether the lease is the debtor's primary asset; and
- (d) whether the debtor has had sufficient time to formulate a plan of reorganization.

Id. at 761. The court enumerated additional factors that may merit consideration, including the complexity of the case and the number of leases that the debtor must evaluate. Id. See also 130 Cong. Rec. S8891, 58,894-95 (daily ed. June 29, 1984) ("cause" includes large number of leases) (statement of Sen. Hatch), reprinted in 1984 U.S.C.C.A.N. 590, 597; In re Unit Portions of Del., Inc., 53 B.R. 83, 85 (Bankr. E.D.N.Y. 1985) ("Congress recognized that there may be times when it is not possible for the trustee to make a careful and informed assessment of the benefits and burdens of the lease within this 60-day period. Accordingly, it empowered the court to grant a trustee who demonstrates cause for an extension additional time to make this assessment.").

23. The Debtors satisfy all of these requirements. First, in compliance with section 365(d)(3) of the Bankruptcy Code, the Debtors fully intend to remain current with respect to all outstanding postpetition rental obligations under the Real Property Leases.

24. Second, the relief requested herein will not affect any lessor's rights in a manner inconsistent with the provisions of the Bankruptcy Code. See Edward J. Debartolo Corp. v. Child World, Inc., 146 B.R. 89, 92 (S.D.N.Y. 1992) (holding that extension of debtors' time to assume or reject its unexpired leases of nonresidential real property is appropriate when leaseholders are not "irreparably injured in the interim"). The Debtors have the financial ability to and intend to perform all of their obligations under the Real Property Leases as required by section 365(d)(3) of the Bankruptcy Code. The significant cash revenues from the Debtors' operations, plus the final court approval on October 27, 2005 of a \$4.5 billion financing package for the Debtors, afford the Debtors such financial ability.

25. Third, certain of the Real Property Leases are among the Debtors' primary assets and are vital to their reorganization efforts. The Debtors' manufacturing sites, technical centers, and sales offices are fundamental to its reorganization efforts. These premises consequently comprise an integral component of the Debtors' strategic business plans.

26. Fourth, given the complexity of these cases, the Debtors have not had sufficient time to formulate a plan of reorganization. These large, complex cases are currently among the largest pending before any bankruptcy court in the United States. As noted above, at the time the Debtors filed these cases:

- (a) Forty-two affiliated entities sought chapter 11 relief.
- (b) The Debtors employ approximately 50,600 people in the U.S. at approximately 44 manufacturing sites and 13 technical centers. Ninety-six percent of the company's 34,750 hourly employees are represented by approximately 49 different international and local unions under various CBAs. The Company's foreign entities employ more than 134,000 people supporting 120 manufacturing sites and 20 technical centers across nearly 40 countries worldwide.

- (c) The Debtors' global 2004 revenues were approximately \$28.6 billion, and global assets as of August 31, 2005 were approximately \$17.1 billion.
- (d) The Debtors supply products to nearly every major global automotive original equipment manufacturer, including its former parent, GM, with approximately \$15.4 billion in sales annually to GM alone.

27. Additionally, as stated above, if the section 365(d)(4) period is not extended, the Debtors may be compelled to assume liabilities prematurely under the Real Property Leases or risk forfeiting benefits associated with certain Real Property Leases. To prevent this difficult choice without sufficient information, this Court should exercise its discretion to extend the section 365(d)(4) deadline to and including June 7, 2007, a date consistent with the Debtors' current projections regarding the timing of plan confirmation.

28. Courts in this circuit and others have granted similar relief to the relief requested herein in other large, complex chapter 11 cases. See, eg., In re UAL Corp., Case No. 02-B-48191 (ERW) (Bankr. N.D. Ill. Feb. 6, 2003, July 21, 2003, Sept. 21, 2005) (extension through plan confirmation); In re WorldCom, Inc., Case No. 02-13533 (AJG) (Bankr. S.D.N.Y. Sept. 19, 2002, Sept. 24, 2003) (extended through plan confirmation); In re Enron Corp., Ch. 11 Case No. 01-16034 (AJG) (Bankr. S.D.N.Y. Jan. 31, 2002, Dec. 19, 2002) (first extension of approximately eleven months; second extension of additional year); In re Ames Dep't Stores, Inc., Case No. 01-4227 (REG) (Bankr. S.D.N.Y. Oct. 3, 2001, Dec. 5, 2001) (extended through confirmation); In re Nextwave Personal Commc'ns Inc., Case No. 98 B 21529 (ASH) (Bankr. S.D.N.Y. July 10, 1998) (extended through confirmation); In re Maidenform Worldwide, Inc., Case No. 97 B 44869 (CB) (Bankr. S.D.N.Y. Sept. 12, 1997) (extended through confirmation).

29. Accordingly, this Court should extend the time within which the Debtors may assume or reject any Real Property Lease to and including June 7, 2007, without prejudice to the Debtors' rights to seek a further extension of such deadline.

Notice

30. Notice of this Motion has been provided in accordance with the Order Under 11 U.S.C. §§ 102(1) And 105 And Fed. R. Bankr. P. 2002(m), 9006, 9007, And 9014 Establishing (I) Omnibus Hearing Dates, (II) Certain Notice, Case Management, And Administrative Procedures, And (III) Scheduling An Initial Case Conference In Accordance With Local Bankr. R. 1007-2(e), entered by this Court on October 14, 2005 (Docket No. 245). In light of the nature of the relief requested, the Debtors submit that no other or further notice is necessary.

Memorandum Of Law

31. Because the legal points and authorities upon which this Motion relies are incorporated herein, the Debtors respectfully request that the requirement of the service and filing of a separate memorandum of law under Local Rule 9013-1(b) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York be deemed satisfied.

WHEREFORE the Debtors respectfully request that the Court enter an order (a) extending the deadline to assume or reject unexpired leases of nonresidential real property to and including June 7, 2007, without prejudice to the Debtors' right to request an additional extension of such time, and (b) granting the Debtors such other further relief as is just.

Dated: New York, New York  
November 9, 2005

SKADDEN, ARPS, SLATE, MEAGHER  
& FLOM LLP

By: /s/ John Wm. Butler, Jr.  
John Wm. Butler, Jr. (JB 4711)  
John K. Lyons (JL 4951)  
Ron E. Meisler (RM 3026)  
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Thomas J. Matz (TM 5986)  
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(212) 735-3000

Attorneys for Delphi Corporation, et al.,  
Debtors and Debtors-in-Possession



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re	:	Chapter 11
	:	
DELPHI CORPORATION, <u>et al.</u> ,	:	Case No. 05-44481 (RDD)
	:	
Debtors.	:	(Jointly Administered)
	:	
-----	x	

ORDER PURSUANT TO 11 U.S.C. § 365(d)(4) EXTENDING  
DEADLINE TO ASSUME OR REJECT UNEXPIRED  
LEASES OF NONRESIDENTIAL REAL PROPERTY

("365(d)(4) DEADLINE EXTENSION MOTION")

Upon the motion, dated November 9, 2005 (the "Motion"), of Delphi Corporation and certain of its subsidiaries and affiliates, debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors"), for an order (the "Order") under 11 U.S.C. § 365(d)(4) extending the deadline for the Debtors to assume or reject unexpired leases of nonresidential real property; and upon the record of the hearing held on the Motion; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties-in-interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED.

2. The date by which the Debtors must assume or reject any and all unexpired leases of nonresidential real property (the "Real Property Leases") is extended to and including June 7, 2007.

3. The entry of this Order shall be without prejudice to (a) the Debtors' right to seek from this Court further extensions of the assumption and rejection deadline with respect to any or all of their Real Property Leases and (b) the right of any party to any Real Property Lease to seek from this Court a shortening of the deadline with respect to any or all of its Real Property Leases for cause shown.

4. Notwithstanding anything contained in this Order, provided that the Debtors file a subsequent motion to extend the section 365(d)(4) deadline in time to be heard prior to the expiration of the applicable section 365(d)(4) deadline for a particular lease, the deadline to assume or reject such lease shall be automatically extended until the later of (a) the date set forth in any subsequent order or (b) three business days after the Court rules on such motion.

5. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

6. The requirement under Rule 9013-1(b) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York for the service and filing of a separate memorandum of law is deemed satisfied by the Motion.

Dated: New York, New York  
November \_\_\_, 2005

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UNITED STATES BANKRUPTCY JUDGE

## **EXHIBIT I**

Delphi Automotive Systems  
Notice Addresses for Leases/Subleases

CREDITORSNAME	CREDITORSNOTICENAME	ADDRESS1	ADDRESS2	CITY	STATE	ZIP
Onix Gf Warren Venture	Onix Gf Warren Venture	100 N Riverside Plaza Ste 1400	C o Onix Warrenincorx Real Estate Equities	Chicago	IL	60606
Visteon Services		1 Village Ctr Dr	Attn Global Real Estate Services	Belleville	MI	48111-5711
Regus Business Centres Corp		100 Manhattanville Rd	Ste 412	Purchase	NY	10577
Onix Gf Warren Venture		100 N Riverside Plaza	Ste 1400	Chicago	IL	60606
Onix Gf Warren Venture	Onix Gf Warren Venture	100 N Riverside Plaza Ste 1400	C o Jim Purinton	Chicago	IL	60606
Aspire Building Llc	Cox Hodgman and Glarmarco	10th Fl Columbia Ctr 101 W Beaver Rd	Attn Basil M Briggs	Troy	MI	48084
Norfolk Southern Corporation	Norfolk Southern Corporation	110 Franklin Rd Se		Roanoke	VA	24042-0044
Fortune Avenue Partners	Fortune Management	110 N Washington St		Kokomo	IN	46901
Fortune Avenue Partners	Fortune Ave Partners	110 N Washington St		Kokomo	IN	46901
Limar Realty Corp	Kilroy Realty Lp	111 Pacifica	Ste 300	Irvine	CA	92618
Kilroy Realty Lp	Kilroy Realty Lp	111 Pacifica Ste 300		Irvine	CA	92618
Green Road Associates Limited Partnership	Green Rd Associates Limited Partnership	115 Depot St C o First Martin Corporation		Ann Arbor	MI	48104
River Road Investments Inc	River Rd Investments Inc	1155 Meadowbrook Ave		Youngstown	OH	44512
Tr Butterfield Trail Corp	c o Capri Capital Advisors LLC	1201 N Clark St	Ste 300	Chicago	IL	60610
Mosser Construction Inc		122 South Wilson Ave		Freemont	OH	43420
Kilroy Realty Lp	McDaniel and McDaniel	12200 W Olympic Blvd Ste 200	Attn Marshall L McDaniel	Los Angeles	CA	90064
Crown Enterprises Inc	Crown Enterprises Inc	12225 Stephens Rd		Warren	MI	48089
Lasalle National Bank As Trustee	C o Nicholson	1300 West Higgins Rd	Porter and List Inc	Park Ridge	IL	60068
Transwestern Great Lakes Lp	Transwestern Great Lakes Lp	1301 W Long Lake Rd Ste 330		Troy	MI	48098
Tr Butterfield Trail Corp	Holland and Knight Llp	131 S Dearborn 30th Fl		Chicago	IL	60603
Energy Corp	Attn Debbie Plummer	139 E Firth St	Attn James T Mayer	Chicago	IL	60603
Cinergy Corp	Cinergy Corp	139 E Fourth St Room 2604at	Room 2604at	Cincinnati	OH	45202
Shelby Industrial Investors	C o Kojaian Mgmt Corp	1400 N Woodward	Attn Debbie Plummer	Bloomfield Hills	MI	48304
Research Properties Llc	Research Properties Llc	1425 Sagamore Pkwy North	Ste 250	Lafayette	IN	47904
Raytheon Company		1520 Hughes Way Bldg A01 M s A162 PO Box 9399	Attn Corporate Real Estate Dept	Long Beach	CA	90810
ltw Mortgage Investments Iv Inc	C o Ge Capital Realty Group Inc	16479 Dallas Pkwy Ste 400		Dallas	TX	75248
ltw Mortgage Investments Iv Inc	Attn Asset Management and Legal Department	16479 Dallas Pkwy Ste 400	C o Ge Capital Realty Corp Inc	Dallas	TX	75248
Oil Well Llc	Moss and Odell Pc	1675 Larimer St Ste 650	Attn Chris Odell	Denver	CO	80202
Jer Investments Llc		17401 Tiller Court		Westfield	IN	46074
Jer Investments Llc	Jer Investments Llc	17401 Tiller Ct		Westfield	IN	46074
Gbg2 Llp	Henry Braly	1800 Pike Rd		Longmont	CO	80501
Oil Well Llc	Frontier Companies Llc	1800 Pike Rd		Longmont	CO	80501
Oil Well Llc	Oil Well Llc	1800 Pike Rd		Longmont	CO	80501
Norfolk Southern Corporation	Norfolk Southern Corporation	185 Spring St Sw		Longmont	CO	80501
1401 Troy Associates Limited Partnership	Douglas M Etkin	200 Franklin Ctr 29100 Northwestern Hwy		Atlanta	GA	30303
General Motors Corporation	General Motors Corporation	200 Renaissance Ctr	Mc 482 B38 C96	Southfield	MI	48034
General Motors Corporation	General Motors Corporation	205 St Paul St Ste 400		Detroit	MI	48265-2000
Gar Properties Llc	Gar Properties Llc	205 St Paul St Ste 400	Attn Fred J Rainaldi	Rochester	NY	14604
Gar Properties Llc	Mangione and Roiman	205 St Paul St Ste 400	Attn Sal Mangione Esq	Rochester	NY	14604
Consumers Power Company	Consumers Power Company	212 W Michigan Ave		Jackson	MI	49201
Donald R and Sarah E Sweeton	Dasco Inc	214 Admiral Circle		Lawrenceburg	TN	33461
County Of Marquette	Sawyer International Airport	225 Airport Ave	Attn Airport Manager	Gwynn	MI	49841
First Industrial Lp	First Industrial Realty Trust Inc	24800 Denso Dr Ste 175		Southfield	MI	48034
First Industrial Lp	First Industrial Realty Trust Inc	24800 Denso Dr Ste 175		Southfield	MI	48034
Mid States Industrial Complex Ltd		2574 E River Rd Bldg 10 Llc	PO Box 744	Dayton	OH	45401-0744
Avi Foodsystems Inc		2590 Elm St Ne	Attn John Paylavas President	Warren	OH	44483
Weingarten Realty Investors	Weingarten Realty Investors	2600 Citadel Plaza Dr Ste 300		Houston	TX	77216
Liberty Property Limited Partnership	Liberty Property Limited Partnership	26911 Northwestern Hwy Ste 205		Southfield	MI	48034
Grand Trunk Western Railroad Inc	Grand Trunk Western Railroad Inc	2800 Livernois		Troy	MI	48007-5025
John E Benz		3017 Exchange Court	Ste A	West Palm Beach	FL	33409

In re Delphi Corporation et al.  
Case No. 05-44481 (RDD)

Delphi Automotive Systems  
Notice Addresses for Leases/Subleases

CREDITORSNAME	GREDITORSNOTICENAME	ADDRESS1	ADDRESS2	CITY	STATE	ZIP
John E Benz	John E Benz	3017 Exchange Ct Ste A	C o John E Benz and Co	West Palm Beach	FL	33409
General Motors Corporation	General Motors Corporation Office Of The General Counsel	3031 W Grand Blvd PO Box 33122	New Ctr One Building	Detroit	MI	48226
Osprey Sa Ltd	Osprey Sa Ltd	305 E Main St	Ste 100	Brighton	MI	48116
500 Commerce Llc	C o Viking Industries Llc	30505 Bainbridge Rd		Solon	OH	44139
Aspire Building Llc	Aspire Building Llc	31000 Northwestern Hwy	Ste 220	Farmington Hills	MI	48334
First Industrial Lp	First Industrial Lp	31000 Northwestern Hwy Ste 200	Attn Andrew Milla	Farmington Hills	MI	48334
First Industrial Lp	First Industrial Lp	311 S Wacker Dr	Ste 4000	Chicago	IL	60606
First Industrial Lp	First Industrial Lp	311 South Wacker Dr Ste 4000	Attn Vice President Portfolio Management	Chicago	IL	60606
Sealy Rg Valley Buildings Lp	C o Sealy and Company Inc	333 Texas St	Ste 1050	Shreveport	LA	71101
Sealy Rg Valley Buildings Lp	Sealy Rg Valley Buildings Lp	333 Texas St Ste 1050 C o Sealy and Company Inc	Attn Mark P Sealy	Shreveport	LA	71101
First Industrial Lp	Barack Ferrazano Kirschbaum Peifman and Nagelberg	333 West Wacker Dr Ste 2700	Attn Suzanne Bessette Smith	Chicago	IL	60606
De North Llc	De North Llc	3811 Palisades Dr		Tuscaloosa	AL	35405
Nissan Technical Center North America Inc	Attn John Calandaro	39001 Sunrise Dr		Farmington Hills	MI	48098
City Of Warren Ohio	City Of Warren Ohio	3901 Mahoning Ave Nw C o Clerk City Engineers		Warren	OH	44483
Miller Valentine Group	Miller Valentine Group	4000 Miller Valentine Court PO Box 744		Dayton	OH	45439-1487
Economic Development Rail Ii Corp	Economic Development Rail Ii Corp	4319 Belmont Ave		Youngstown	OH	44505
Anherst Commerce Park	Anherst Commerce Park	4508 Main St		Buffalo	NY	14226
Gbg2 Lp	Gbg2 Lp	4508 Main St	Ste 206	Anherst	NY	14226
Gbg2 Lp	Gbg2 Lp	4730 Walnut St	Boulder	Boulder	CO	80301
Enerdel	C o Gibbons White Inc	500 W Cypress Creek Rd Ste 100	C o Gibbons White Inc	Boulder	CO	80301
Csx Transportation	Csx Transportation	500 Water St J180	Attn Kevin P Fitzgerald	FT Lauderdale	FL	33309
Cit Of Tulsa Rogers County Port Authority	Cit Of Tulsa Rogers County Port Authority	5350 Cimarron Rd		Jacksonville	FL	32202
City Of Tulsa Oklahoma	City Of Tulsa Oklahoma	5350 Cimarron Rd	City Of Tulsa Rogers Co Port Authority	Catoosa	OK	74015
Cherokee North Kansas City Llc	Cherokee North Kansas City Llc	5445 Dlc Pkwy Ste 900	Ste 900	Catoosa	OK	74015
Wells Management Company	Wells Management Company	6200 The Corners Pkwy Ste 250		Englewood	CO	80111
Universal Tool And Engineering Inc	Universal Tool And Engineering Inc	7601 E 88th Pl		Englewood	CO	80111
Mike Hales Real Estate Ltd	Mike Hales Real Estate Ltd	804 Meadowbrook Dr Ste 102		Norcross	GA	30092
Saginaw Centre Development Company Llc	Saginaw Centre Development Company Llc	804 S Hamilton St		Indianapolis	IN	46256
Germans Technology Group Custom Coating And Enhancements Inc	Germans Technology Group Custom Coating And Enhancements Inc	8333 Swanston Ln		Glathe	KS	66062
Raytheon Company	Raytheon Company	870 Winter St		Saginaw	MI	48602
Tr Butterfield Trail Corp	Tr Butterfield Trail Corp	875 N Michigan Ave Ste 3430 Co Capri Capital Advisors Llc	Attn Corporate Real Estate Dept	Gilroy	CA	95020
Laurence Tippman Sr Family Limited Partnership	Laurence Tippman Sr Family Limited Partnership	9009 Coldwater Rd	Attn Asset Manager	Waltham	MA	02451
Tawas Industries	Tawas Industries	905 Cedar St		Chicago	IL	60611
North Renaissance Development Llc	North Renaissance Development Llc	909 Washington Ave PO Box 348		Fort Wayne	IN	46825
Barrister Executive Suites Inc	Lease Termination Dept	9841 Airport Blvd		Tawas City	MI	48763
Jor Investments Llc	Dann Pecar Newman Kleinman Pc	Attn Jeffrey A Abrams	Ste 1200	Bay City	MI	48708
Nissan Technical Center North America Inc	Nissan North America	Attn Sue Derian Assistant General Counsel	One American Square Ste 2300 PO Box	Los Angeles	CA	90045
County Of Marquette	County Of Marquette	Marquette County Courthouse Complex	82008	Indianapolis	IN	46282
Ford Motor Land Development Corporation	Attn Property Manager Fairlane North	Ste 1500 East		Torrance	CA	90502
Regus Business Centres Corp	Regus Business Centres Corp	Attn Mr John Rudakas		Marquette	MI	49855
Milwaukee Investment Company	Milwaukee Investment Company	One Tower Ln Ste 1700		Dearborn	MI	48126
Ford Motor Land Development Corp	Ford Motor Land Development Corp	One Towne Sq Ste 1200 C o Signature Associates	Attn Property Management	Oakbrook Terrace	IL	60181
		Ste 1500 East One Pkland Blvd	Attn Property Manager Fairlane North	Southfield	MI	48076
				Dearborn	MI	48126

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
:  
In re : Chapter 11  
:  
DELPHI CORPORATION, et al., : Case No. 05-44481 (RDD)  
:  
Debtors. : (Jointly Administered)  
:  
-----X

ORDER PURSUANT TO 11 U.S.C. § 365(d)(4) EXTENDING  
DEADLINE TO ASSUME OR REJECT UNEXPIRED  
LEASES OF NONRESIDENTIAL REAL PROPERTY

("365(d)(4) DEADLINE EXTENSION ORDER")

Upon the motion, dated November 9, 2005 (the "Motion"), of Delphi Corporation and certain of its subsidiaries and affiliates, debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors"), for an order (the "Order") under 11 U.S.C. § 365(d)(4) extending the deadline for the Debtors to assume or reject unexpired leases of nonresidential real property; and upon the record of the hearing held on the Motion; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties-in-interest; and this Court having found that the only objection filed against the Debtors' Motion was the Objection of ORIX Warren, LLC to Motion for Order Under 11 U.S.C. § 365(d)(4) Extending Deadline to Assume or Reject Leases of Nonresidential Real Property (Docket No. 1123) which objection was subsequently resolved pursuant to the terms of this Order; and this Court having further found that no other objections or responses have been timely or properly filed; and it appearing that proper and



adequate notice of the Motion has been given and that no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED.
2. The date by which the Debtors must assume or reject any and all unexpired leases of nonresidential real property (the "Real Property Leases"), except for the Real Property Lease set forth in paragraph 3 below, is extended to and including June 7, 2007.
3. The date by which the Debtors must assume or reject the lease between Orix Warren, LLC ("Orix") and Delphi Automotive Systems, LLC of non-residential real property located at 4551 Research Parkway, Warren, Ohio (the "Orix Lease") is hereby extended to and including December 7, 2006 (the "Initial Extension"). The Initial Extension shall be further extended for an additional six months to June 7, 2007, without further notice or a hearing (the "Additional Extension"), unless Orix files and serves a notice of objection to the Additional Extension on or prior to October 1, 2006, in which case a hearing with respect to the Orix Lease and the granting of the Additional Extension shall be held at the next omnibus hearing to occur at least 30 days following the October 1, 2006 deadline. In the event of such a hearing, the Debtors shall bear the burden of proof regarding "cause" for such extension, as such term is contemplated under 11 U.S.C. § 365(d)(4) and the Debtors shall file their related pleading at least 10 calendar days prior to the applicable omnibus hearing. Notwithstanding the aforementioned, all filings, service and deadlines related thereto shall be determined pursuant to the Order Under 11 U.S.C. §§ 102(1) and 105 and Fed.R.Bankr.P. 2002(m), 9006, 9007, and 9014 Establishing (I) Omnibus Hearing Dates, (II) Certain Notice, Case Management, and Administrative Procedures, and (III) Scheduling an Initial Case Conference in Accordance with Local Bankr.R. 1007-2(e) ("Case

Management Order") (Docket No. 245). To the extent such hearing occurs after the expiration of the Initial Extension, the deadline to assume or reject the Orix Lease shall be automatically extended until the later of (a) the date set forth in any subsequent order or (b) ten business days after the Court rules on Orix's objection.

4. The entry of this Order shall be without prejudice to (a) the Debtors' right to seek from this Court further extensions of the assumption and rejection deadline with respect to any or all of their Real Property Leases and (b) the right of any party to any Real Property Lease to seek from this Court a shortening of the deadline with respect to any or all of its Real Property Leases for cause shown.

5. Notwithstanding anything contained in this Order, provided that the Debtors file a subsequent motion to extend the section 365(d)(4) deadline in time to be heard prior to the expiration of the applicable section 365(d)(4) deadline for a particular lease, the deadline to assume or reject such lease shall be automatically extended until the later of (a) the date set forth in any subsequent order or (b) three business days after the Court rules on such motion.

6. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

7. The requirement under Rule 9013-1(b) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York for the service and filing of a separate memorandum of law is deemed satisfied by the Motion.

Dated: New York, New York  
November 29, 2005

/s/Robert D. Drain  
UNITED STATES BANKRUPTCY JUDGE





# **EXHIBIT G**

COMPANY	CONTACT	ADDRESS1	ADDRESS2	CITY	STATE	ZIP	Party/Function
WHITEFORD, TAYLOR & PRESTON L.L.P.	Brent C. Strickland	Seven Saint Paul Street		Baltimore	MD	21202	Counsel for Pepco Energy Services, Inc.

# **EXHIBIT H**

COMPANY	CONTACT	ADDRESS1	ADDRESS2	CITY	STATE	ZIP	COUNTRY
DICONZA LAW, P.C.	Gerard DiConza, Esq.	630 Third Avenue	7th Floor	New York	NY	10017	
VARNUM, RIDDERING, SCHMIDT & HOWLETT LLP	Michael S. McElwee, Esq.	333 Bridge Street, N.W.	Ste. 1700	Grand Rapids	MI	49504	

# **EXHIBIT I**

COMPANY	CONTACT	ADDRESS1	ADDRESS2	CITY	STATE	ZIP	PHONE
Cherokee North Kansas City LLC		5445 DTC Parkway	Suite 900	Englewood	CO	80111	
ROSEN SLOME MARDER LLP	Thomas R. Slome and Alan E. Marder	333 Earle Ovington Boulevard	Suite 901	Uniondale	NY	11553-3622	(516) 227-1600
Brownstein Hyatt & Farber, P.C.	Michael J. Pankow and Daniel J. Garfield	410 Seventeenth Avenue		Denver	CO	80202-4437	(303) 223-1106